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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 43

HARRY BRAVERMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 44

ALLEN WAINER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

**ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT**

PETITIONS FOR CERTIORARI FILED MARCH 9, 1942.

CERTIORARI GRANTED APRIL 14, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
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**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION, NOVEMBER TERM, A. D.
1939**

No. 25,571

UNITED STATES OF AMERICA, Plaintiff,

VS.

HARRY BRAVERMAN, ET AL., Defendants

INDICTMENT—Filed December 19, 1939

Violation: Sec. 37 C. C.

26 U. S. C. 1397 (a), (1), (Sec. 3253 I. R. C.);

26 U. S. C. 1152 (a), (Sec. 2803 I. R. C.);

26 U. S. C. 1152 (a), (Sec. 2803 I. R. C.);

26 U. S. C. 1184 (2833 I. R. C.);

26 U. S. C. 1441, (3321 I. R. C.);

26 U. S. C. 1162 (2810 I. R. C.);

26 U. S. C. 1185, (2834 I. R. C.);

Eastern District of Michigan,
Southern Division, ss:

The Grand Jurors of the United States of America empaneled and sworn in the District Court of the United States for the Eastern District of Michigan, Southern [fol. 2] Division, and inquiring for that District upon their oaths and affirmations present and charge: That Harry Braverman, alias "Hunky" Braverman, Allen Wainer, alias Al Wainer, alias Joe Burns alias J. Lipkin, alias Mr. Rogers, alias Frank Stein, alias Harry Stein, alias A. J. Parker, Stanley Slesur, alias Stanley Slesure, alias Stanley Slesuraitis, alias "Tony" alias Harry Marcus, alias George Barton, Tony Rouba, Ellis Johnson, alias Al Johnston, alias Roy Johnson, alias Bill Johnson, alias Gus Johnson, alias H. Miller, William Bagdonas, alias Bill Bagda, alias H. Miller, alias "Balloon Head," alias Bill Bagdonas, Morris Frank, alias Maurice Frank, Jesse E. Johnson, Vincent Badalamenti, alias Jimmie Badalamenti, alias Jimmie, Vincent Badalamenti, Jr., Rosario Tardino, alias "Sonny," alias

Sonny Tardino, Julius J. Weizer, Nick Giordano, Angelo Porello, Sebastiano Ardiro, alias Sebastian Ardere, alias Joe, Tony Arcodia, Jack Cantella, Leonard Spigutz, William Tabor, Fred Tabor, Henry Skampo, alias Clarence Wilson, alias Hank Skampo, alias Chester Johnson, Clarence Dracka, alias Don Nelson, alias Bert Foley, Fred Stevens, John Carbaugh, Sr., Benjamin Ware, Herbert Miller, Edward Kleppel, William P. Dudas, William Cheplick, James J. Barrett, late of the Division and District aforesaid, hereinafter referred to as defendants, and John Carbaugh, Jr., Daniel T. Carroll, Charles Pacente, Guy Anderson, Charles Gleiser, Edwin Stokes, and Stanley Wasielewski, alias Stanley Wasielewski, alias Stanley Wasiek, alias "Speed," alias "Speedy," alias "Polack," hereinafter referred to as co-conspirators but not defendants herein, and divers other persons to these Grand Jurors unknown, did in the Eastern District of Michigan, Southern Division, and within the jurisdiction of this Honorable Court, and also in the States of Illinois, Wisconsin, and Ohio, from, to-wit: the first day of November, A. D., 1935, to the first day of September, A. D. 1939, unlawfully, feloniously, knowingly and wilfully conspire, combine, confederate, arrange and agree together and each with the other to commit at the times aforesaid, at, to-wit: 9666 Grand River avenue, in the City of Detroit, County of Wayne, State of Michigan; at the City of Wyandotte, County of Wayne, State of Michigan; [fol. 3] at 3454 Mack avenue, in the City of Detroit, County of Wayne, State of Michigan, all in the Eastern District of the Southern Division of the State of Michigan, and within the jurisdiction of this Honorable Court, and also at the City of Chicago, Cook County, State of Illinois; at the City of Toledo, County of Lucas, State of Ohio; and in the City of Cleveland, State of Ohio; an offense against the laws of the United States, that is to say, that the said aforementioned defendants and co-conspirators would, during the aforementioned time and at the aforementioned places, unlawfully, knowingly, wilfully and feloniously carry on the business of wholesale and retail liquor dealers without having the special occupational tax stamp as required by law; Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

And the Grand Jurors do further charge and present: That in furtherance of, and in execution of, and for the

purpose of carrying out and effecting the object and design of the said aforementioned conspiracy, the said aforementioned defendants and co-conspirators did and committed the following overt acts:

I.

That on or about the 15th day of December, A. D., 1935 defendant Harry Braverman, alias "Hunky" Braverman, met defendant Henry Skampo, alias Clarence Wilson, alias Hank Skampo, alias Chester Johnson, at to-wit: 9666 Grand River avenue, Detroit, Michigan, at which time an agreement was reached to ship alcohol from Chicago, Illinois, to Detroit, Michigan:

II.

That on or about the 15th day of January, A. D., 1936, defendant Harry Braverman, alias "Hunky" Braverman, shipped 15 boxes of alcohol, labeled "Caramel Extract," to defendants Henry Skampo, alias Clarence Wilson, alias Hank Skampo, alias Chester Johnson, and Clarence Dracka [fol. 4] ka; alias Don Nelson, alias Bert Foley, from Chicago, Illinois, at Detroit, Michigan, consigned in the name of Palmer Distributing Company, c/o Wyandotte Cartage Company, 3630 Biddle avenue, Wyandotte, Michigan.

III.

That on or about the 16th day of January, A. D., 1936, defendant William Chaplick received at Detroit, Michigan, a shipment of fifteen boxes of alcohol labeled "Caramel Extract" consigned in the name of Palmer Distributing Company, c/o Wyandotte Cartage, 3630 Biddle avenue, Wyandotte, Michigan.

IV.

That on or about the 16th day of January, A. D. 1936, defendants Henry Skampo, alias Clarence Wilson, alias Hank Skampo, alias Chester Johnson, and Clarence Dracka, alias Don Nelson, alias Bert Foley, received from defendant William Cheplick delivery of fifteen boxes of alcohol at a garage on Superior street, Wyandotte, Michigan.

V.

That on or about the 24th day of April, A. D. 1936, defendant Allen Wainer, under the name of "J. Rosen" used

Room 549 in the Empire Warehouse, 5041 Lake Park avenue, Chicago, Illinois.

VI.

That on or about the 26th day of April, A. D. 1936, defendant Allen Wainer shipped six boxes of alcohol from Chicago to defendants Henry Skampo and Clarence Dracka at Detroit, consigned in the name of Rug Life, Inc., Chicago, as shipper, to Perfect Carpet Cleaners, 16830 Log Cabin avenue, Detroit, Michigan.

VII.

That on or about the 3rd day of July, A. D. 1936, co-conspirator Charles Pacente transported nine boxes labeled [fol. 5] Rug Life, Inc., from the Empire Warehouse, 5041 Lake Park avenue, Chicago, Illinois, to the Chicago dock of the Roadway Transportation Company.

VIII.

That on or about the 18th day of November, A. D. 1936, defendant Fred Stevens rented to defendants Henry Skampo and Clarence Dracka, room 549 Empire Warehouse, 5041 Lake Park avenue, Chicago, Illinois, under the name of Rug Life, Inc.

IX.

That on or about the 11th day of January, A. D. 1938, defendant James J. Barrett directed co-conspirator Guy Anderson, a driver for the Empire Warehouse to go to the National Box Company, 1101 West 38th street, Chicago, Illinois, and see Daniel Nelson.

X.

That on or about the 18th day of November, A. D. 1936, defendant Morris Frank, alias Maurice Frank, delivered to defendant Clarence Dracka at Empire Warehouse, 5041 Lake Park avenue, Chicago, Illinois, a quantity of illicit alcohol.

XI.

That on or about the 1st day of March, A. D. 1937, at Chicago, Illinois, defendant Stanley Slesur hired co-conspirator Stanley Wasielenski to drive a Dodge truck.

XII.

That on or about the 3rd day of March, A. D. 1937, at Chicago, Illinois, defendants Ellis Johnson and Stanley Slesur directed defendant Tony Rouba and co-conspirator Stanley Wasielewski in the delivery of a load of illicit alcohol from Racine, Wisconsin, to defendant Clarence Dracka at Empire Warehouse, 5041 Lake Park avenue, Chicago, Illinois.

[fol. 6]

XIII.

That on or about the 5th day of January, A. D. 1938, at Chicago, Illinois, defendants Ellis Johnson and William Bagdonas shipped six boxes of illicit alcohol, labeled "Cleaning Fluid" from Chicago, consigned from Rug Life, Inc., Chicago, to Star Products Company, c/o defendant Jesse E. Johnson, 6011 12th street, Detroit, Michigan.

XIV.

That on or about the 11th day of January, A. D. 1938, defendant Jesse E. Johnson received at Detroit, Michigan, a shipment of seven boxes of illicit alcohol, labeled "Rug Cleaning Fluid," consigned from Rug Life, Inc., Chicago, Illinois, to Star Products Company, c/o defendant Jesse E. Johnson, 6011 12th street, Detroit, Michigan.

XV.

That on or about the 11th day of April, A. D. 1939, defendant John Carbaugh, Sr., received at Cleveland, Ohio, a shipment of illicit alcohol, labeled "Rug Cleaning Fluid," and consigned from Rug Life, Inc., Chicago, Illinois, to Goddard Products, c/o John Carbaugh and son, Cleveland, Ohio.

XVI.

That on or about the 11th day of April, A. D. 1939, defendant Tony Arcodia and Sebastiano Ardiro at their residence on Miner Road, Highland Heights, Ohio, received a shipment of ten boxes of illicit alcohol from defendant John Carbaugh, Sr., which they stored in their garage.

XVII.

That on or about the 13th day of April, A. D. 1939, at the residence of defendants Tony Arcodia and Sebastiano

Ardiro, on Miner Road, Highland Heights, Ohio, defendant [fol. 7] Julius J. Weizer, assisted by defendants Tony Arcodia and Sebastiano Ardiro, loaded, to-wit: 100 gallons of illicit alcohol into a Ford Coupe, bearing 1939 Ohio license number KY 589.

XVIII

That on or about the 24th day of April, A. D. 1939, defendant Rosario Tardino conveyed a load of illicit alcohol from premises on Miner Road, Highland Heights, Ohio, into the City of Cleveland, Ohio.

Contrary to the form, force, and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

Count Two

And the Grand Jurors aforesaid, do further present: That heretofore, to-wit from the first day of November, A. D. 1935, to the first day of September, A. D. 1939, the said defendants, Harry Braverman, alias "Hunky" Braverman, Allen Wainer, alias Al Wainer, alias Joe Burns, alias J. Lipkin, alias Mr. Rogers, alias Frank Stein, alias Harry Stein, alias A. J. Parker, Stanley Slesur, alias Stanley Slesure, alias Stanley Slesuraitis, alias "Tony," alias Harry Marcus, alias George Barton, Tony Rouba, Ellis Johnson, alias Al Johnson, alias Roy Johnson, alias Bill Johnson, alias Gus Johnson, alias H. Miller, William Bagdonas, alias Bill Bagda, alias H. Miller, alias "Balloon Head," alias Bill Bagdonas, Morris Frank, alias Maurice Frank, Jesse E. Johnson, Vincent Badalamenti, alias Jimmie Badalamenti, alias Jimmie, Vincent Baladamenti, Jr., Rosario Tardino, alias "Sonny," alias Sonny Tardino, Julius J. Weizer, Nick Giordano, Angelo Porello, Sebastiano Ardiro, alias Sebastian Ardere, alias Joe, Tony Arcodia, Jack Cantella, Leonard Spigutz, William Tabor, Fred Tabor, Henry Skampo, alias Clarence Wilson, alias Hank Skampo, alias Chester Johnson, Clarence Dracka, alias Don Nelson, alias Bert Foley, Fred Stevens, John Car- [fol. 8] baugh, Sr., Benjamin Ware, Herbert Miller, Edward Kleppel, William P. Dudas, William Cheplick, James J. Barrett, all late of the Division and District aforesaid, hereinafter referred to as defendants, and Stanley Wasielewski, alias Stanley Wasielewski, alias Stanley Wasiek, alias "Speed," alias "Speedy," alias "Polack," John

Carbaugh, Jr., Daniel T. Carroll, Charles Pacente, Guy Anderson, Charles Gleiser and Edwin Stokes, co-conspirators, hereinafter referred to as co-conspirators but not defendants herein, and divers other persons to these Grand Jurors unknown, did, in the Eastern District of Michigan, Southern Division, and within the jurisdiction of this Honorable Court, and also in the State of Illinois, Wisconsin, and Ohio, unlawfully, feloniously, knowingly and wilfully conspire, combine, confederate arrange and agree together and each with the other to commit at the times aforesaid at, to-wit 9666 Grand River avenue, in the City of Detroit, Count of Wayne, State of Michigan; at the City of Wyandotte, County of Wayne, State of Michigan; 3454 Mack avenue, 6011 12th street and 4535 Beaufait street, all in the City of Detroit, County of Wayne, State of Michigan, all in the Eastern District of the Southern Division of the State of Michigan, and within the jurisdiction of this Honorable Court; and also at the City of Chicago, Cook County, State of Illinois; at the City of Racine, County of Racine, State of Wisconsin; at the City of Toledo, County of Lucas, State of Ohio; and in the City of Cleveland, County of Cuyahoga, State of Ohio; an offense against the laws of the United States of America, that is to say, that the said aforementioned defendants and co-conspirators would, during the aforementioned time and at the aforementioned places, unlawfully, knowingly, wilfully and feloniously possess distilled spirits, the immediate containers thereof not having affixed there to stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits; Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

[fol. 9] And the Grand Jurors do further charge and present: That in furtherance of, and in execution of, and for the purpose of carrying out and effecting the object and design of the said aforementioned conspiracy the said aforementioned defendants and co-conspirators did and committed the following overt acts:

I

On or about January 8, 1936 defendant Harry Braverman shipped 14 cases containing 6-5 gallon cans each of

illicit alcohol via Cushman Motor Freight at Chicago, Illinois consigned to Hirsch Baking Supply Company at Detroit, Michigan.

II

On or about January 27, 1936 defendant Harry Braverman shipped 8 cases of illicit alcohol via Cushman Motor Freight at Chicago, Illinois consigned to Palmer Distributing Co., % Wyandotte Cartage Co., 3630 Biddle Street, Wyandotte, Michigan.

III

On or about April 30, 1936, defendant Al Wainer shipped a quantity of distilled spirits to-wit, 4 cases containing six 5-gallon cans each, via Roadway Transit Company at Chicago, Illinois consigned to Perfect Carpet Cleaners, 3630 Biddle ave., Wyandotte, Michigan.

IV

On or about January 6, 1938, defendant Jesse E. Johnson received shipment of illicit alcohol, to-wit 6 cases containing six 5-gallon cans each of illicit alcohol at 6011 12th street, Detroit, Michigan, consigned to Star Products Co., % J. E. Johnson, 6011 12th street, Detroit, Michigan.

V

On or about January 12, 1938, defendant Jesse E. Johnson received shipment of illicit alcohol, to-wit, 7 cases containing six 5-gallon cans each of illicit alcohol at 6011 12th street, Detroit, Michigan, consigned to Star Products Co., % J. E. Johnson, 6011 12th Street, Detroit, Michigan.

VI

On or about January 17, 1938, defendant Al Johnson and Bill Bagdonas shipped 7 cases of illicit alcohol via Roadway Transit at Chicago, Illinois, consigned to Goddard Products % John Carbaugh, Cleveland, Ohio.

VII

On or about January 18, 1938, defendants John Carbaugh, Sr. and Benjamin Ware received delivery and hauled quantity of illicit alcohol, to-wit: 7 cases of illicit alcohol from Roadway Transit Company dock at Cleveland, Ohio to 864 152 street, Cleveland, Ohio.

VIII

On or about January 18, 1938, defendants James Badalamenti, Al Johnson and William Bagdonas possessed a quantity of illicit alcohol, to-wit: 7 cases of illicit alcohol, at 864 152 street, Cleveland, Ohio.

IX

On or about February 23, 1938; defendants, James Badalamenti, Al Johnson and William Bagdonas, possessed a quantity of distilled spirits at 864 152 street, Cleveland, Ohio.

X

On or about February 26, 1938, defendant James Badalamenti, assisted by defendants Fred Tabor and William Tabor, rented space in the Herbert J. Miller garage, at corner of East 130th and Woodland avenues, Cleveland, Ohio to be used for the storage of alcohol.

[fol. 11]

XI

On or about February 26, 1938 Herbert J. Miller rented to James Badalamenti, both defendants, space in Herbert J. Miller garage at corner of East 130th and Woodland avenues, Cleveland, Ohio, to be used for the storage of alcohol.

XII

On or about June 15, 1938, defendants James Badalamenti and Vincent Badalamenti, Jr., Fred Tabor, William Tabor, William Dudas, Herbert J. Miller, Jack Cantella and Edward Kleppel possessed and handled illicit alcohol at Herbert J. Miller garage at corner of East 130th and Woodland avenues, Cleveland, Ohio.

XIII

On or about April 24, 1939, defendants Sebastiano Ardiro and Tony Arcodia received from Roadway Transit Company dock in Cleveland, Ohio, and delivered to the residence of Tony Arcodia and Sebastiano Ardiro, Miner Road, Highland Heights, near Cleveland, Ohio, by John Carbaugh, Sr.'s truck a quantity of distilled spirits, to-wit: 10 cases containing 6 5-gallon cans each of illicit alcohol.

XIV

On or about May 17, 1939, defendant Nick Giordano transported a quantity of distilled spirits, to-wit: 2 5-gallon cans of illicit alcohol in a Ford Coupe, from 7306 Carnegie ave. to 2260 Rockwell avenue, in the City of Cleveland, Ohio.

XV

On or about May 4, 1939, defendant Angelo Porello conveyed a load of alcohol from a garage on Miner Road, Highland Heights, Ohio to 7306 Carnegie avenue, Cleveland, Ohio.

[fol. 12]

XVI

On or about June 3, 1939, defendant Leonard Spigutz assisted in receiving and storing a quantity of distilled spirits at 7306 Carnegie avenue, Cleveland, Ohio.

XVII

On or about November 29, 1936, co-conspirators Charles Gleiser and Edwin Stokes received at 4535 Beaufait street, Detroit, Michigan five cases of illicit alcohol labelled "rug cleaning fluid" which was then stored in the Mack avenue Storage Warehouse for defendant Henry Skampo.

Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

Count Three

And the Grand Jurors aforesaid, do further present: That heretofore, to-wit: from the first day of November, A. D. 1935, to the first day of September, A. D. 1939, the said defendants Harry Braverman, alias "Hunky" Braverman, Allen Wainer, alias Al Wainer, alias Joe Burns, alias J. Lipkin, alias Mr. Rogers, alias Frank Stein, alias Harry Stein, alias A. J. Parker, Stanley Slesur, alias Stanley Slesure, alias Stanley Slesuraitis, alias "Tony," alias Henry Marcus, alias George Barton, Tony Rouba, Ellis Johnson, alias Al Johnson, alias Roy Johnson, alias Bill Johnson, alias Gus Johnson, alias H. Miller, William Bagdonas, alias Bill Bagda, alias H. Miller, alias "Balloon Head," alias Bill Bagdonas, Morris Frank, alias Maurice Frank, Jesse E. Johnson, Vincent Badalamenti, alias Jim-

mie Badalamenti, alias Jimmie, Vincent Badalamenti, Jr., Rosario Tardino, alias "Sonny," alias Sonny Tardino, Julius L. Weizer, Nick Giordano, Angelo Porello, Sebastian Ardiro, alias Sebastian Ardere, alias Joe, Tony Arcodia, Jack Cantella, Leonard Spigutz, William Tabor, Fred Tabor, Henry Skampo, alias Clarence Wilson, alias Hank [fol. 13] Skampo, alias Chester Johnson, Clarence Dracka, alias Don Nelson, alias Bert Foley, Fred Stevens, John Carbaugh, Sr., Benjamin Ware, Herbert Miller, Edward Kleppel, William P. Dudas, William Cheplick, and James J. Barrett, all late of the Division and District aforesaid, hereinafter referred to as defendants, and John Carbaugh, Jr.; Daniel T. Carroll, Charles Pacente, Guy Anderson, Charles Gleiser, Edwin Stokes, and Stanley Wasielewski, alias Stanley Wasielewski, alias Stanley Wasiek, alias "Speed," alias "Speedy," alias "Polack," hereinafter referred to as co-conspirators but not defendants herein, and divers other persons to these Grand Jurors unknown, did, in the Eastern District of Michigan, Southern Division, and within the jurisdiction of this Honorable Court, and also in the States of Illinois, Wisconsin, and Ohio, unlawfully, feloniously, knowingly, and wilfully conspire, combine, confederate, arrange and agree together and each with the other to commit at the times aforesaid an offense against the laws of the United States of America, that is to say, that the said aforementioned defendants and co-conspirators would, during the aforementioned time and at the aforementioned places, unlawfully, knowingly, wilfully and feloniously transport large quantities of distilled spirits, the immediate containers thereof not having affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits, from the City of Chicago, via the Cushman Motor Freight, The Roadway Transit Company, and by the Liberty Highway Company, and by other vehicles, to, to-wit: 3454 Mack avenue, in the City of Detroit, County of Wayne, State of Michigan; Wyandotte Cartage Company, 3630 Biddle street, in the City of Wyandotte, County of Wayne, State of Michigan; 16830 Log Cabin avenue, in the City of Detroit, Wayne County, State of Michigan; 2043 East 81st street, in the City of Cleveland, County of Cuyahoga, State of Ohio; a residence building occupied by Sebastian Ardiro and Tony Arcodia, on Miner Road, Highland Heights,

County of Cuyahoga, State of Ohio; 7306 Carnegie avenue, [fol. 14] in the City of Cleveland, County of Cuyahoga, State of Ohio; and 6011 12th street, in the City of Detroit, County of Wayne, State of Michigan; Contrary to the form; force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

And the Grand Jurors do further charge and present: That in furtherance of, and in execution of, and for the purpose of carrying out and effecting the object and design of the said aforementioned conspiracy, the said aforementioned defendants and co-conspirators did and committed the following overt acts:

I

That on or about the 1st day of May, A. D. 1936, defendant Allen Wainer shipped a quantity of distilled spirits, to-wit: 8 boxes of illicit alcohol, via Roadway Transit Company, Inc. from Chicago, Illinois, to Detroit, Michigan.

II

That on or about the 11th day of July, A. D. 1936, defendant William Cheplick, transported from the dock of the Roadway Transit Company, Inc., at Detroit, Michigan, in an automobile truck, a quantity of distilled spirits, to-wit: illicit alcohol, to the vicinity of 3630 Biddle street, Wyandotte, Michigan.

III

That on or about the 1st day of August, A. D. 1938, co-conspirator Guy Anderson, a truck driver for the Empire Warehouses, Inc., transported in an automobile truck a quantity of distilled spirits, to-wit: 8 boxes of illicit alcohol from the Empire Warehouse, 5041 Lake Park Avenue, Chicago, Illinois to the dock of the Roadway Transit Company, Inc., near 39th and Wallace street, Chicago, Illinois.

[fol. 15]

IV

That on or about the 1st day of February, A. D. 1938, defendant John Carbaugh transported a quantity of distilled spirits, to-wit: illicit alcohol, from the dock of the Roadway Transit Company, Inc., to a garage at 864 E. 152 street, in the City of Cleveland, Ohio.

Contrary to the form, force, and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

Count Four

And the Grand Jurors aforesaid, do further present: That heretofore, to-wit from the first day of November, A. D. 1935 to the first day of September, A. D. 1939, the said defendants Harry Braverman, alias "Hunky" Braverman, Allen Wainer, alias Al Wainer, alias Joe Burns, alias J. Lipkin, alias Mr. Rogers, alias Frank Stein, alias Harry Stein, alias A. J. Parker, Stanley Slesur, alias Stanley Slesure, alias Stanley Slesuraftis, alias "Tony," alias Harry Marcus, alias George Barton, Tony Rouba, Ellis Johnson, alias Al Johnson, alias Roy Johnson, alias Bill Johnson, alias Gus Johnson, alias H. Miller, William Bagdonas, alias Bill Bagda, alias H. Miller, alias "Balloon Head," alias Bill Bagdonas, Morris Frank, alias Maurice Frank, Jesse Johnson, Vincent Badalamenti, alias Jimmie Badalamenti, alias Jimmie, Vincent Badalamenti, Jr., Rosario Tardino, alias "Sonny," alias Sonny Tardino, Julius J. Weizer, Nick Giordano, Angelo Porello, Sebastian Ardiro, alias Sebastian Ardere, alias Joe, Tony Arcodia, Jack Cantella, Leonard Spigutz, William Tabor, Fred Tabor, Henry Skampo, alias Clarence Wilson, alias Hank Skampo, alias Chester Johnson, Clarence Dracka, alias Don Nelson, alias Bert Foley, Fred Stevens, John Carbaugh Sr., Benjamin Ware, Herbert Miller, Edward Kleppel, William P. Dudas, William Cheplick, James J. Barrett, all late of the Division and District aforesaid, [Vol. 16] hereinafter referred to as defendants, and John Carbaugh, Jr., Daniel T. Carroll, Charles Pacente, Guy Anderson, Charles Gleiser, Edwin Stokes and Stanley Wasielewski, alias Stanley Wasielewski, Stanley Wasiek, alias "Speed," alias "Speedy," alias "Polack," hereinafter referred to as co-conspirators but not defendants herein, and divers other persons to these Grand Jurors unknown, did, in the Eastern District of Michigan, Southern Division, and within the jurisdiction of this Honorable Court, and also in the States of Illinois, Wisconsin, and Ohio, unlawfully, feloniously, knowingly and wilfully conspire, combine, confederate, arrange and agree together and each with the other to commit at the times aforesaid, at, to-wit: 9666

Grand River avenue, in the City of Detroit, County of Wayne, State of Michigan; at the City of Wyandotte, County of Wayne, State of Michigan; at 3454 Mack Avenue, in the City of Detroit, County of Wayne, State of Michigan, all in the Eastern District of the Southern Division of the State of Michigan, and within the jurisdiction of this Honorable Court, and also at the City of Chicago, Cook County, State of Illinois; at the City of Racine, County of Racine, State of Wisconsin; at the City of Toledo, County of Lucas, State of Ohio, and in the City of Cleveland, County of Cuyahoga, State of Ohio; an offense against the laws of the United States of America, that is to say, that the said aforementioned defendants and co-conspirators would, during the aforementioned time and at the aforementioned places, unlawfully, knowingly, wilfully and feloniously engage in and carry on the business of distillers without having given bond as required by law and with the intent on the part of the said aforementioned defendants and co-conspirators to defraud the government of the United States of America of the tax on the spirits which would be distilled by the said aforementioned defendants and co-conspirators; Contrary to the form, force and effect of the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

And the Grand Jurors do further charge and present: That in furtherance of, and in execution of, and for the [fol. 17] purpose of carrying out and effecting the object and design of the said aforementioned conspiracy, the said aforementioned defendants and co-conspirators did and committed the following overt acts:

I

That on or about the 2nd day of March, A. D. 1937, defendant Tony Rouba and Stanley Wasielewski, co-conspirator but not defendant, hauled from an illicit distillery at Racine, Wisconsin, to the Empire Warehouse, 5041 Lake Park, Chicago, Illinois, a quantity of distilled spirits.

II

That on or about the 10th day of March, A. D. 1937, at 3454 Mack avenue, Detroit, Michigan; Edwin Stokes, co-conspirator but not defendant, received from the Roadway

Transit Company, Inc., Freight Bill No. C.12540, a quantity of distilled spirits, to-wit: illicit alcohol which had been distilled in an illicit distillery at Racine, Wisconsin, operated by defendants Ellis Johnson, Stanley Slesur, William Bagdonas, Tony Rouba, and other co-conspirators whose names are to these Grand Jurors unknown.

III

That on or about the 24th day of March, A. D. 1937, at 3546 Beaufait street, Detroit, Michigan, defendant Henry Skampo received from Roadway Transit Company, Inc., (Freight Bill No. C12540) a quantity of distilled spirits, to-wit: illicit alcohol which had been distilled in an illicit distillery at Racine, Wisconsin, operated by defendants Ellis Johnson, Stanley Slesur, William Bagdonas, Tony Rouba, and other co-conspirators whose names are to these Grand Jurors unknown.

IV

That on or about the 2nd day of March, A. D. 1937, defendant Fred Stevens assisted in placing in the Empire Warehouse, 5041 Lake Park, Chicago, Illinois, a quantity [fol. 18] of distilled spirits which had theretofore been manufactured in an illicit distillery operated at Racine, Wisconsin, by defendants Ellis Johnson and Stanley Slesur, without having given bond as required by law.

Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

Count Five

And the Grand Jurors aforesaid, do further present: That heretofore, to-wit: from the first day of November, A. D. 1935, to the first day of September, A. D. 1939, the said defendants, Harry Braverman, alias "Hunky" Braverman, Allen Wainer, alias Al Wainer, alias Joe Burns, alias J. Lipkin, alias Mr. Rogers, alias Frank Stein, alias Harry Stein, alias A. J. Parker, Stanley Slesur, alias Stanley Slesure, alias Stanley Slesuraitis, alias "Tony", alias Harry Marcus, alias George Barton, Tony Rouba, Ellis Johnson, alias Al Johnson, alias Roy Johnson, alias Bill Johnson, alias Gus Johnson, alias H. Miller,

William Bagdonas, alias Bill Bagda, alias H. Miller, alias "Balloon Head," alias Bill Bagdonas, Morris Frank, alias Maurice Frank, Jesse E. Johnson, Vincent Badalamenti, alias Jimmie Badalamenti, alias Jimmie, Vincent Badalamenti, Jr., Rosario Tardino, alias "Sonny," alias Sonny Tardino, Julius J. Weizer, Nick Giordano, Angelo Porello, Sebastiano Ardiro, alias Sebastian Ardere, alias Joe, Tony Arcodia, Jack Cantella, Leonard Spigutz, William Tabor, Fred Tabor, Henry Skampo, alias Clarence Wilson, alias Hank Skampo, alias Chester Johnson, Clarence Dracka, alias Don Wilson, alias Bert Foley, Fred Stevens John Carbaugh, Sr., Benjamin Ware, Herbert Miller, Edward Kleppel, William P. Dudas, William Cheplick, James J. Barrett, all late of the Division and District aforesaid, hereinafter referred to as defendants, and John Carbaugh, Jr., Daniel T. Carroll, Charles Pacente, Guy Anderson, [fol. 19] Charles Gleiser, Edwin Stokes, and Stanley Wasielewski, alias Stanley Wasielewski, Stanley Wasiek, alias "Speed," alias "Speedy," alias "Polack," hereinafter referred to as co-conspirators, but not defendants herein, and divers other persons to these Grand Jurors unknown, did, in the Eastern District of Michigan, Southern Division, and within the jurisdiction of this Honorable Court, and also in the States of Illinois, Wisconsin, and Ohio, unlawfully, feloniously, knowingly and wilfully conspire, combine, confederate, arrange and agree together and each with the other to commit at the times aforesaid, at to-wit, 9666 Grand River avenue, in the City of Detroit, County of Wayne, State of Michigan; at the City of Wyandotte, County of Wayne, State of Michigan; 3454 Mack avenue, in the City of Detroit, County of Wayne, State of Michigan, all in the Eastern District of the Southern Division of the State of Michigan, and within the jurisdiction of this Honorable Court; and also at the City of Chicago, County of Cook, State of Illinois; at the City of Racine, County of Racine, State of Wisconsin; at the City of Toledo, County of Lucas, State of Ohio; in the City of Cleveland, County of Cuyahoga, State of Ohio; at Room 549 Empire Warehouse, 5041 Lake Park avenue, in the City of Chicago, County of Cook, State of Illinois; at a garage in alley between Talman and Rockwell streets near 48th street, in the City of Chicago, County of Cook, State of Illinois; at the premises known as 3630 Biddle

street, Wyandotte, County of Wayne, State of Michigan; and at 4540 Mack avenue, City of Detroit, State of Michigan, an offense against the laws of the United States of America, that is to say, that the said aforementioned defendants and co-conspirators would during the aforementioned time and at the aforementioned places, unlawfully, knowingly, wilfully and feloniously remove, deposit and conceal distilled spirits, in respect whereof a tax was then and there imposed by the laws of the United States, with intent to defraud the United States of such tax: Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

[fol. 20] And the Grand Jurors do further charge and present: that in furtherance of, and in execution of, and for the purpose of carrying out and effecting the object and design of the said aforementioned conspiracy, the said aforementioned defendants and co-conspirators did and committed the following overt acts:

I

On or about March 3, 1937, the co-conspirator Stanley Wasielewski and the defendant Tony Rouba, acting under directions of the defendants Al Johnson and Stanley Slesur removed a quantity of distilled spirits, to-wit: 100 five-gallon cans of alcohol, from a distillery in the Old Racine Manufacturer Building, at Racine, Wisconsin.

II

On or about March 3, 1937, the defendants Tony Rouba, Stanley Slesur, and Ellis Johnson assisted by the co-conspirator Stanley Wasielewski, deposited and concealed in a garage in an alley between Talman and Rockwell streets, Chicago, Illinois, a quantity of distilled spirits which had previously thereto been removed from a distillery at Racine, Wisconsin.

III

On or about March 3, 1937, the defendants Clarence Dracka and Fred Stevens deposited and concealed in Room 549, Empire Warehouse, 5041 Lake Park avenue, Chicago, Illinois, a quantity of distilled spirits, to-wit: alcohol,

which had previously thereto been removed from a distillery at Racine, Wisconsin.

IV

On or about March 3, 1937, the defendant James J. Barrett acted as general manager of a warehouse at 5041 Lake Park avenue, Chicago, Illinois, in which was stored a quantity of distilled spirits, to-wit: alcohol, which had [fol. 21] previously thereto been removed from an illicit distillery at Racine, Wisconsin.

V

On or about March 8, 1937, the defendant Henry Skampo, at a warehouse in Detroit, Michigan, operated by the co-conspirator Charles Gleiser, received, deposited, and concealed at 4535 Beaufait street, Detroit, Michigan, a quantity of distilled spirits, to-wit: alcohol, which had previously thereto been removed from an illicit distillery at Racine, Wisconsin, via the Empire Warehouse, 5041 Lake Park avenue, Chicago, Illinois, and thence via Roadway Transit Company trucks to Detroit, Michigan.

Contrary to the form, force, and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

Count Six

And the Grand Jurors aforesaid, do further present: That heretofore, to-wit: from the first day of November, A. D. 1935, to the first day of September, A. D. 1939, the said defendants, Harry Braverman, alias "Hunky" Braverman, Allen Wainer, alias Al Wainer, alias Joe Burns, alias J. Lipkin, alias Mr. Rogers, alias Frank Stein, alias Harry Stein, alias A. J. Parker, Stanley Slesur, alias Stanley Slesure, alias Stanley Slesuraitis, alias "Tony," alias Harry Marcus, alias George Barton, Tony Rouba, Ellis Johnson, alias Al Johnson, alias Roy Johnson, alias Bill Johnson, alias Gus Johnson, alias H. Miller, William Bagdonas, alias Bill Bagda, alias H. Miller, alias "Balloon Head," alias Bill Bagdonas, Morris Frank, alias Maurice Frank, Jesse E. Johnson, Vincent Badalamenti, alias Jimmie Badalamenti, alias Jimmie, Vincent Badalamenti, Jr., Rosario Tardino, alias "Sonny," alias Sonny

Tardino, Julius J. Weizer, Nick Giordano, Angelo Porello, Sebastiano Ardiro, alias Sebastian Ardere, alias Joe, Tony Arcodia, Jack Cantella, Leonard Spigutz, William Tabor, [fol: 22] Fred Tabor, Henry Skampo, alias Clarence Wilson, alias Hank Skampo, alias Chester Johnson, Clarence Dracka, alias Don Nelson, alias Bert Foley, Fred Stevens, John Carbaugh, Sr., Benjamin Ware, Herbert Miller, Edward Kleppel, William P. Dudas, William Cheplick, James J. Barrett, all late of the Division and District aforesaid, hereinafter referred to as defendants, and John Carbaugh, Jr., Daniel T. Carroll, Charles Pacente, Guy Anderson, Charles Gleiser, Edwin Stokes, and Stanley Wasielewski, alias Stanley Wasielewski, Stanley Wasiek, alias "Speed," alias "Speedy," alias "Polack," hereinafter referred to as co-conspirators, but not defendants herein, and divers other persons to these Grand Jurors unknown, did, in the Eastern District of Michigan, Southern Division, and within the jurisdiction of this Honorable Court, and also in the States of Illinois, Wisconsin, and Ohio, from, to-wit: the first day of November, A. D. 1935, to the first day of September, A. D. 1939, unlawfully feloniously, knowingly and willfully conspire, combine, confederate, arrange and agree together and each with the other to commit at the times aforesaid at, to-wit: the Old Racine Manufacturers Company building, 1015-1025 West Sixth street, in the City of Racine, County of Racine, State of Wisconsin, an offense against the laws of the United States, that is to say, that the said aforementioned defendants and co-conspirators would during the aforementioned time and at the aforementioned places, unlawfully, knowingly, wilfully and feloniously possess and cause to be possessed, keep in custody, control and cause to be controlled certain still and distilling apparatus for the production of distilled spirits, and would set up and cause to be set up the said aforementioned stills and distilling apparatus without having the same registered with the District Supervisor of the Alcohol Tax Unit, Bureau of Internal Revenue, as required by law and regulations; Contrary to the form, force and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

And the Grand Jurors do further charge and present: that in furtherance of, and in execution of, and for the

[fol. 23] purpose of carrying out and effecting the object and design of the said aforementioned conspiracy, the said aforementioned defendants and co-conspirators did and committed the following overt acts:

I

That on or about the 2nd day of March, A. D. 1937, defendants Stanley Slesur and Ellis Johnson conveyed and assisted in unloading a truck containing 100 bags of sugar into an illicit distillery they were operating in Racine, Wisconsin.

II

That on or about the 16th day of March, A. D. 1937, defendants Stanley Slesur, and Ellis Johnson did possess in Racine, Wisconsin, set up and in operation one 1460-gallon still, one 700-gallon still and complete distilling equipment.

III

That on or about the evening of March 2nd, A. D. 1937, and the morning of March 3, A. D. 1937, co-conspirator but not defendant Stanley Wiesleuski and defendant Tony Rouba assisted by defendants Ellis Johnson and Stanley Slesur unloaded 100 bags of sugar from a Dodge Truck into an illicit distillery in Racine, Wisconsin, they reloaded the truck with 100 five-gallon cans of illicit alcohol and delivered the alcohol to defendant Clarence Dracka at the Empire Warehouse, 5041 Lake Park avenue, Chicago, Illinois.

IV

That on or about the 6th day of March, A. D. 1937, defendant Henry Skampo received at the Mack avenue Storage Company, 4535 Beaufait avenue, Detroit, Michigan, a shipment consisting of five boxes of illicit alcohol, such alcohol having been purchased in Chicago, Illinois, by defendant [fol. 24] Clarence Dracka from defendants Ellis Johnson and Stanley Slesur, who manufactured the alcohol in an illicit distillery in Racine, Wisconsin.

Contrary to the form, force and effect to the Act of Congress in such case made and provided and against the peace and dignity of the United States.

Count Seven

And the Grand Jurors aforesaid, do further present: That heretofore, to-wit: from the first day of November, A. D. 1935, to the first day of September, A. D. 1939, the said defendants, Harry Braverman, alias "Hunky" Braverman, Allen Wainer, alias Al Wainer, alias Joe Burns, alias J. Lipkin, alias Mr. Rogers, alias Frank Stein, alias Harry Stein, alias A. J. Parker, Stanley Slesur, alias Stanley Slesure, alias Stanley Slesuraitis, alias "Tony," alias Harry Marcus, alias George Barton, Tony Rouba, Ellis Johnson, alias Al Johnson, alias Roy Johnson, alias Bill Johnson, alias Gus Johnson, alias H. Miller, William Bagdonas, alias Bill Bagda, alias H. Miller, alias "Balloon Head," alias Bill Bagdonas, Morris Frank, alias Maurice Frank, Jesse E. Johnson, Vincent Badalamenti, alias Jimmie Badalamenti, alias Jimmie, Vincent Badalamenti, Jr., Rosario Tardino, alias "Sonny," alias Sonny Tardino, Julius J. Weizer, Nick Giordano, Angello Porello, Sebastiano Ardiro, alias Sebastian Ardere, alias Joe, Tony Arcodia, Jack Cantella, Leonard Spigutz, William Tabor, Fred Tabor, Henry Skampo, alias Clarence Wilson, alias Hank Skampo, alias Chester Johnson, Clarence Dracka, alias Don Nelson, alias Bert Foley, Fred Stevens, John Carbaugh, Sr., Benjamin Ware, Herbert Miller, Edward Kleppel, William P. Dudas, William Cheplick, James J. Barrett, all late of the Division and District aforesaid, hereinafter referred to as defendants, and John Carbaugh, Jr., Daniel T. Carroll, Charles Pacente, Guy Anderson, Charles Gleiser, Edwin Stokes, and Stanley Wasielewski, alias Stanley Wasielewski, alias Stanley Wasiek, alias "Speed," alias [fol. 25] "Speedy," alias "Polack," hereinafter referred to as co-conspirators, but not defendants herein, and divers other persons to these Grand Jurors unknown, did, in the Eastern District of Michigan, Southern Division, and within the jurisdiction of this Honorable Court, and also in the States of Illinois, Wisconsin, and Ohio, unlawfully feloniously, knowingly and wilfully conspire, combine, confederate, arrange and agree together and each with the other to commit at the times aforesaid, at, to-wit: the Old Racine Manufacturers Company building, 1015-1025 West Sixth street, in the City of Racine, County of Racine, State of Wisconsin, an offense against the laws of the United States of America, that is to say, that the said aforementioned de-

defendants and co-conspirators would, during the aforementioned times and at the aforementioned places, unlawfully, knowingly, wilfully and feloniously make and ferment and cause to be made and fermented large quantities of mash, wort, and/or wash, to-wit: 37,500 gallons of mash, a mixture and compound fit for distillation and the production of distilled spirits, in a building and on premises which would not be then and there a distillery or premises duly authorized and designated according to law as a distillery; Contrary to the form, force, and effect of the Act of Congress in such case made and provided, namely: Section 2834 Internal Revenue Code, and against the peace and dignity of the United States.

And the Grand Jurors do further charge and present: that in furtherance of, and in execution of, and for the purpose of carrying out and effecting the object and design of the said aforementioned conspiracy, the said aforementioned defendants and co-conspirators did and committed the following overt acts:

I

That on or about the 16th day of March, A. D. 1937, defendants Ellis Johnson and Stanley Slesur possessed a quantity of mash, to-wit: 37,500 gallons, at the City of Racine, County of Racine, State of Wisconsin.

[fol. 26]

II

That on or about the 2nd day of March, A. D. 1937, defendants Ellis Johnson, Stanley Slesur and Tony Rouba, and Stanley Wasielewski, co-conspirator but not defendant, did unload into an illicit distillery in Racine, Wisconsin, 100 bags of sugar to be used in the fermenting of mash.

III

That on or about the 3rd day of March, A. D. 1937, defendant Clarence Dracka received, to-wit: 100 cans at Empire Warehouse, 5041 Lake Park avenue, Chicago, Illinois.

IV

That on or about the 5th day of March, A. D. 1937, defendant Henry Skampo received delivery of a shipment of illicit alcohol at 3454 Mack avenue, in the City of Detroit, County of Wayne, State of Michigan.

Contrary to the form, force, and effect of the Act of Congress in such case made and provided and against the peace and dignity of the United States.

John C. Lehr, United States Attorney; Louis M. Hopping, Assistant United States Attorney, Eastern District of Michigan.

GJP.

A true bill, Geo. N. Jones.

Filed December 19, 1939. George M. Read, Clerk.

[fol. 27] IN UNITED STATES DISTRICT COURT

ARRAIGNMENT OF HARRY BRAVERMAN—Filed February 6, 1940

Indictment for violation of Sec. 37 C. C.

26 U. S. C. 1397 (a) (1), (Sec. 3253 I. R. C.);

26 U. S. C. 1152 (a), (Sec. 2803 I. R. C.);

26 U. S. C. 1152 (a), (Sec. 2803 I. R. C.);

26 U. S. C. 1184 (2833 I. R. C.);

26 U. S. C. 1441 (3321 I. R. C.);

26 U. S. C. 1162 (2810 I. R. C.);

26 U. S. C. 1185 (2834 I. R. C.).

At a session of said Court held in the City of Detroit on the 6th day of February, 1940.

Present: Honorable Edward J. Moinet, District Judge.

The defendant Harry Braverman, alias "Hunky" Braverman, being present in Court with his attorney Donald Frederick, and being arraigned on the indictment heretofore filed against him, waives the reading thereof and stands mute; and thereupon a plea of not guilty is entered under the direction of the Court.

Thereupon the Court does now here order the appearance bond of said defendant continued in full force and effect.

Edward J. Moinet, District Judge.

[fol. 28] IN UNITED STATES DISTRICT COURT

ARRAIGNMENT OF ALLEN WAINER—Filed February 5, 1940

Indictment for violation of Sec. 37 C. C.
 26 U. S. C. 1397 (a) (1), (Sec. 3253 I. R. C.);
 26 U. S. C. 1152 (a), (Sec. 2803 I. R. C.);
 26 U. S. C. 1152 (a), (Sec. 2803 I. R. C.);
 26 U. S. C. 1184 (2833 I. R. C.);
 26 U. S. C. 1441 (3321 I. R. C.);
 26 U. S. C. 1162 (2810 I. R. C.);
 26 U. S. C. 1185 (2834 I. R. C.).

At a session of said Court held in the City of Detroit on the 5th day of February, 1940.

Present: Honorable Edward J. Moinet, District Judge.

The defendant Allen Wainer, alias Al Wainter, alias Joe Burns, alias J. Lipkin, alias Mr. Rogers, alias Frank Stein, alias Harry Stein, alias A. J. Parker, being present in Court with his attorney John E. Dougherty, and being arraigned on the indictment heretofore filed against him, waives the reading thereof and pleads not guilty to the charges in the said indictment contained.

Thereupon the Court does now here order the appearance bond of said defendant continued in full force and effect.

Edward J. Moinet, District Judge.

[fol. 29] IN UNITED STATES DISTRICT COURT

ARRAIGNMENT OF MORRIS FRANK—Filed February 6, 1940

Indictment for violation of Sec. 37 C. C.
 26 U. S. C. 1397 (a) (1), (Sec. 3253 I. R. C.);
 26 U. S. C. 1152 (a), (Sec. 2803 I. R. C.);
 26 U. S. C. 1152 (a), (Sec. 2803 I. R. C.);
 26 U. S. C. 1184 (2833 I. R. C.);
 26 U. S. C. 1441 (3321 I. R. C.);
 26 U. S. C. 1162 (2810 I. R. C.);
 26 U. S. C. 1185 (2834 I. R. C.).

At a session of said Court held in the City of Detroit on the 6th day of February, 1940.

Present: Honorable Edward J. Moinet, District Judge.

The defendant Morris Frank, alias Maurice Frank, being present in Court, and having been fully informed of his constitutional right to counsel, and being asked whether he desires counsel appointed by the Court, says that he does not desire the assistance of counsel; and being arraigned on the indictment heretofore filed against him, waives the reading thereof and pleads not guilty to the charges in said indictment.

Thereupon the Court does now here order the said defendant remanded into the custody of the United States Marshal.

Edward J. Moinet, District Judge.

[fol. 30] IN UNITED STATES DISTRICT COURT

FINAL RECOGNIZANCE OF HARRY BRAVERMAN—Filed January 12, 1940

District Court of the United States, Northern District of Illinois, Eastern Division.

We Harry Braverman, 4840 N. Kimball Ave., Chicago, Ill., as principal, and Inland Bonding Company, 176 W. Adams St., Chicago, Ill., as surety, jointly and severally acknowledge ourselves to be indebted unto the United States of America, in the sum of \$2500.00 dollars, lawful money of the United States, to be levied of our goods and chattels, lands and tenements, upon this condition:

That if the said Harry Braverman shall personally be and appear on February 6, A. D. 1940, before the United States District Court for the Eastern District of Michigan, being holden at the Courthouse of the said United States, in the City of Detroit, in the Southern Division of the said District, and from day to day during subsequent terms of the said Court, there to answer to such matters and things as shall be objected against him on behalf of the said United States, for violation of Section 68, Title 18, U. S. Code and the Internal Revenue laws of the U. S. (liquor)

and shall abide the order and judgment of the said Court in that behalf, and not depart the said Court without leave

thereof, then this recognizance to be void: otherwise to remain in full force and virtue.

And in the event that default be made in the condition of this writing obligatory as herein provided, it shall be lawful for and the undersigned irrevocably authorize and empower the United States Attorney of said District, whoever he may be, or any Assistant United States Attorney of said District, or any Attorney authorized to appear in the District Court of said District, to appear for us in the said District Court at any time thereafter and confess a judgment in the amount of this obligation, together with [fol. 31] costs, in favor of the United States of America, and against the undersigned, without process and without a trial by jury, the undersigned hereby waiving the right of a trial by jury, and we do hereby waive and release all errors which may intervene in any such proceedings, and consent to the issuance of execution upon said judgment at any time after thirty days from the date the United States Attorney of said District has mailed written notice of the entry of said judgment to the undersigned at their addresses set forth herein, or in the justification of bail scheduled in this cause, affidavit of mailing of said notice to be proof of said mailing, and we do hereby ratify and confirm all that said Attorney may do by virtue hereof.

Harry Braverman, Inland Bonding Company, by
J. W. Magnuson, Attorney in fact. (Seal.)

Signed, sealed and acknowledged this 8 day of January,
A. D. 1940, before me.

Edward Walker, United States Commissioner.

Approved this 8 day of January, A. D. 1940.

Edward Walker, United States Commissioner.

[fol. 32] IN UNITED STATES DISTRICT COURT

FINAL RECOGNIZANCE OF ALLEN WAINER—Filed January 12,
1940

District Court of the United States, Northern District of
Illinois, Eastern Division.

We, Allen Wainer, 823 Buena Avenue, Chicago, Illinois,
as principal, and Hartford Accident and Indemnity Com-

pany, Rm. 1329-A Insurance Exchange Building, Chicago, Illinois, as surety, jointly and severally acknowledge ourselves to be indebted unto the United States of America, in the sum of \$2500.00 dollars, lawful money of the United States, to be levied of our goods and chattels, lands and tenements, upon this condition:

That if the said Allen Wainer shall personally be and appear on February 6, A. D. 1940, before the United States District Court for the Eastern District of Michigan, being holden at the Courthouse of the said United States, in the City of Detroit, in the Southern Division of the said District, and from day to day during subsequent terms of the said Court, there to answer to such matters and things as shall be objected against him on behalf of the said United States, for violation of Section 88, Title 18, U. S. Code and the Internal Revenue laws of the United States, and shall abide the order and judgment of the said Court in that behalf, and not depart the said Court without leave thereof, then this recognizance to be void: otherwise to remain in full force and virtue.

And in the event that default be made in the condition of this writing obligatory as herein provided, it shall be lawful for and the undersigned irrevocably authorize and empower the United States Attorney of said District, whoever he may be, or any Assistant United States Attorney of said District, or any Attorney authorized to appear in the District Court of said District, to appear for us in the said District Court at any time thereafter and confess a judgment in the amount of this obligation, together with the costs, in favor of the United States of America, and [fol. 33] against the undersigned, without process and without a trial by jury, the undersigned hereby waiving the right of a trial by jury, and we do hereby waive and release all errors which may intervene in any such proceedings, and consent to the issuance of execution upon said judgment at any time after thirty days from the date the United States Attorney of said District has mailed written notice of the entry of said judgment to the undersigned at their addresses set forth herein, or in the justification of bail scheduled in this cause, affidavit of mailing of said

notice to be proof of said mailing, and we do hereby ratify and confirm all that said Attorney may do by virtue hereof.

Allen Wainer, Hartford Accident and Indemnity Company, by Arthur F. Noll, Attorney in fact.
(Seal.)

Signed, sealed and acknowledged this 11 day of January, A. D. 1940, before me.

Edward Walker, United States Commissioner.

Approved this 11 day of January, A. D. 1940.

Edward Walker, United States Commissioner.

[fol. 34] IN UNITED STATES DISTRICT COURT

FINAL RECOGNIZANCE OF MORRIS FRANK—Filed February 15, 1940

UNITED STATES OF AMERICA,

Eastern District of Michigan, ss:

Be it remembered, that on the 15th day of February, A. D. 1940 in said District, before J. Stanley Hurd, a United States Commissioner for the Eastern District of Michigan duly appointed and qualified to take acknowledgements of bail, etc., in and for said Eastern District, personally appeared Morris Frank, 4211 W. Van Buren St., Chicago, Illinois in said District, and produced as Surety, Inland Bonding Company, 176 W. Adams St., Chicago, Illinois, and the said Inland Bonding Company and Defendant jointly and severally acknowledged themselves bound unto the said United States of America in the sum of twenty-five hundred (\$2500.00) dollars, good and lawful money of the United States of America, to be levied of their goods and chattels, lands and tenements, if default be made in the conditions following, to-wit:

The condition of this recognizance is such, that if the above bounden Defendant shall personally be and appear in the District Court of the United States for the Eastern District of Michigan at the Court House in Detroit in said Eastern District on the 15th day of February, A. D. 1940, at 9:30 o'clock forenoon of said day, and from day to day, and term to term thereafter, to answer to any indict-

ment which may be exhibited and filed in said Court by the Grand Jurors of the United States for the body of Eastern District of Michigan against Morris Frank and abide such order and determination as said Court may make concerning him on said indictment or information, and shall not depart said Court without leave thereof, [fol. 35] then the above obligation to be void, otherwise to remain in full force and effect.

Morris Frank, Inland Bonding Company, by J. W. Magnuson, Attorney in fact. (Seal.)

Taken, Subscribed and Acknowledged before me, this 15th day of February, A. D. 1940.

George M. Read, U. S. Commissioner, Eastern District of Michigan.

Violation of United States Internal Revenue Laws.

Date of Offense: — —, — —.

IN UNITED STATES DISTRICT COURT

DEFENDANT HARRY BRAVERMAN'S REQUEST TO CHARGE—Filed
June 10, 1940

1. I charge you ladies and gentlemen of the jury, that before you may render a verdict of guilt as to the defendant, Harry Braverman, under the first count of this indictment, you must be satisfied beyond a reasonable doubt from the testimony in the case, not only that he agreed to ship alcohol from the City of Chicago to the City of Detroit and that an overt act was executed in order to carry into effect this agreement, but you must be further satisfied beyond a reasonable doubt and from the testimony in the case that the unlawful agreement into which he entered included the States of Illinois, Wisconsin and Ohio and contemplated the carrying on of the business of wholesale and retail liquor dealers in violation of law in these states, as well as [fol. 36] at 9666 Grand River avenue, at 3454 Mack avenue, in the City of Detroit, State of Michigan, and also in the City of Toledo and the City of Cleveland in the State of Ohio. Unless you so find, it becomes your duty to render a verdict of not guilty as to him.

2. I charge you ladies and gentlemen of the jury that in order to render a verdict of guilt as to the defendant,

Harry Braverman, under count two of this indictment, you must be satisfied beyond reasonable doubt from the testimony in the case, not only that he unlawfully agreed to ship alcohol from the City of Chicago to the City of Detroit, Michigan, and that an overt act was executed in order to carry into effect this unlawful agreement, but that it was further a part of the said unlawful agreement into which he entered that the conspirators therein contemplated the unlawful possession of distilled spirits in the States of Illinois, Wisconsin and Ohio, as well as 9666 Grand River avenue, 6011 12th street, and 4535 Beaufait street, in the City of Detroit, County of Wayne, at the City of Racine, State of Wisconsin, and in the Cities of Toledo and Cleveland, in the State of Ohio. Unless you so find, it becomes your duty to render a verdict of not guilty as to him under this count of the indictment.

3. I charge you ladies and gentlemen of the jury, that in order to find the defendant, Harry Braverman, guilty of the third count of the indictment, you must be satisfied beyond a reasonable doubt from the testimony in the case that he entered into an unlawful agreement with some, or all, of the defendants named to unlawfully transport quantities of distilled spirits from the City of Chicago via Cushman Motor Freight, the Roadway Transit Company, and the Liberty Highway Company, to 3454 Mack avenue, in the City of Detroit, the Wyandotte Cartage Company, 3630 Biddle street, in the City of Wyandotte, 16830 Log Cabin avenue, in the City of Detroit, as well as to 2043 East 81st street, in the City of Cleveland, to the residence building occupied by the defendants, Ardiro and Arcodia, on Miner [fol. 37] Road, and to 7306 Carnegie avenue, in the City of Cleveland, Ohio, as well as to 6011 12th street, in the City of Detroit. Unless you find that the said defendant, Harry Braverman, was a party to the conspiracy having this transport to these addresses, it becomes your duty to render a verdict of not guilty as to him.

4. I charge you ladies and gentlemen of the jury, that in order to render a verdict of guilt as to the defendant, Harry Braverman, under the fourth count of the indictment, you must be satisfied beyond a reasonable doubt from the testimony here presented, not only that he agreed to ship illicit alcohol from the City of Chicago to the City of Detroit, and that there was an overt act executed to effect its object, but

that the unlawful agreement into which he entered contemplated the engaging in and carrying on the business of distillers without giving proper bond therefor in the States of Illinois, Wisconsin and Ohio, and also, at 9666 Grand River avenue and 3454 Mack avenue, in the City of Detroit, the City of Chicago, Illinois, the City of Racine, Wisconsin, and the Cities of Toledo and Cleveland in Ohio. Unless you so find, it becomes your duty to render a verdict of not guilty as to him under this count of the indictment.

5: I charge you ladies and gentlemen of the jury, that in order to render a verdict of guilt as to the defendant, Harry Braverman, under the fifth count of this indictment, you must be satisfied beyond a reasonable doubt from the testimony in the case that the agreement into which he entered, if you find he entered into one, contemplated the removal, disposing and concealing of distilled spirits in the States of Illinois, Wisconsin and Ohio, as well as at 9666 Grand River avenue, 3454 Mack avenue, in the City of Detroit, as well as the City of Wyandotte in the State of Michigan, and also, Chicago, Illinois, Racine, Wisconsin, and Toledo and Cleveland in the State of Ohio. Likewise, this agreement contemplated such illegal concealment at Room 549 Empire Warehouse at 5041 Lake Park avenue, at a [fol. 38] garage between Talman and Rockwell streets near 48th street, in the City of Chicago, and at 3630 Biddle street, in the City of Wyandotte, State of Michigan, and at 3454 Mack avenue in the City of Detroit. If you find that the agreement of which he was a party, if you find a party to any agreement, did not include all of these aforementioned addresses, it then becomes your duty to render a verdict of not guilty as to him under this count of the indictment.

6. I charge you ladies and gentlemen of the jury, that in order to render a verdict of guilt as to the defendant, Harry Braverman, under the sixth count of the indictment, you must be satisfied beyond a reasonable doubt from all of the testimony in the case, first, that the defendant, Harry Braverman, entered into an unlawful agreement which had as its object the unlawful possession of a still and distilling apparatus at 1015-1025 West Sixth street, in the City of Racine, Wisconsin. Unless you so find, it becomes your duty to render a verdict of not guilty as to the defendant, Harry Braverman.

7. I charge you ladies and gentlemen of the jury, that in order to find a verdict of guilt as to the defendant, Harry Braverman, under the seventh count of this indictment, you must be satisfied beyond a reasonable doubt from all of the testimony in the case that the said defendant, Harry Braverman, entered into an unlawful agreement with some or all of the defendants herein having as its object the making and fermenting, or causing to be made and fermented, large quantities of mash, wort, and/or wash, at 1015-1025 West Sixth street, in the City of Racine, State of Wisconsin. Unless you so find, it becomes your duty to render a verdict of not guilty as to him under this count of the indictment.

8. I charge you ladies and gentlemen of the jury, that if you find from the testimony here presented that the said defendant, Harry Braverman, entered one or all of the conspiracies here charged against him in the Fall of 1935 [fol. 39] and affirmatively withdrew therefrom in the Spring of 1936, it then becomes your duty to render a verdict of not guilty as to him, unless you are satisfied beyond a reasonable doubt from the testimony here presented that some time between the Spring of 1936 and the date of filing of this indictment, to-wit: December of 1939, the said defendant, Harry Braverman, participated in, or actively consented to the performance of some of the acts which were done in order to carry out the objects of the conspiracy as charged.

9. I charge you ladies and gentlemen of the jury that in determining the question of whether or not the said defendant, Harry Braverman, consented to or participated in, or was active in the conduct of the conspiracy charged against him during the three-year period covered from the Spring of 1936 to December of 1939, you are to be governed by the same rules of law and evidence as I have given you in respect to all other questions in the case, and unless you are satisfied from the testimony beyond reasonable doubt that the said defendant, Harry Braverman, did actively participate, consent to, or acquiesce in any of the acts which were committed during this three-year period, and which had as their purpose the carrying into execution the objects of this conspiracy, it then becomes your duty to render a verdict of not guilty as to him.

10. I charge you ladies and gentlemen of the jury, that in considering the question as to whether the said defend-

ant, Harry Braverman, did in any way participate in, acquiesce in, or actively consent to the performance of any overt act during the three-year period covering the Spring of 1936 to the date of the filing of this indictment, to-wit: in December of 1936, you cannot consider the testimony of the agents of the Alcohol Tax Unit, who testified relative to certain acts and conduct of the co-conspirators and co-defendants, inasmuch as their recitation of the act and conduct of such co-conspirators cannot be used to prove the existence of the conspiracy. On the contrary, you [fol. 40] must be satisfied from other evidence in the case that the said defendant, Harry Braverman, did participate in and did in some manner assist in the carrying out of the objects of the conspiracy during the three-year period mentioned.

11. I charge you ladies and gentlemen of the jury, that though you may conclude from the testimony here introduced that the said defendant, Harry Braverman, did enter into an unlawful agreement, that you cannot render a verdict of guilt as to him under any count of the indictment, unless you are satisfied beyond reasonable doubt that the agreement he entered into contemplated the matters specifically set forth in the indictment.

12. I charge you ladies and gentlemen of the jury, that in considering the seven counts of this indictment, you must consider them as separate offenses and before a verdict of guilt may be rendered upon all, you must be satisfied from the testimony in the case and beyond reasonable doubt that there has been proof showing the existence of the separate agreements or conspiracies charged. If you find that there was but one agreement having as its purpose the accomplishment of an unlawful end and which encompassed the purposes set forth in the various counts of this indictment, it then becomes your duty to find the defendant, Harry Braverman, not guilty of the charges here made against him.

13. I charge you ladies and gentlemen of the jury, that the Government's case is predicated upon the theory of a continuing conspiracy which began in the Fall of 1935 and continued until November of 1939, but that if you find from the testimony in the case that a new and separate agreement was entered into between the defendants,

Skampo, Dracka, Wainer, and others, in the Spring of 1936, it becomes your duty to render a verdict of not guilty as to the defendant, Harry Braverman, unless you are satisfied beyond a reasonable doubt from the testimony that the agreement so entered into by the defendant [fol. 41] ants, Skampo, Dracka, and Wainer was known to, acquiesced in, or participated in by the defendant, Harry Braverman, either at the time of its inception, or during the period of its existence.

14. I charge you ladies and gentlemen of the jury, that though a defendant may commit what is known in law as a substantive offense and in this case ship alcohol from the City of Chicago to the City of Detroit, or the City of Wyandotte, you cannot find him guilty of the crime here charged unless you are further satisfied beyond reasonable doubt that he entered into, acquiesced in, or participated in one or all of the conspiracies here charged against him.

15. I charge you ladies and gentlemen of the jury, that before you may render a verdict of guilt on this indictment, or any count thereof, you must be satisfied from the evidence in the case that it excludes every reasonable hypothesis but that of guilt. If the evidence can be reconciled with the theory of innocence or with guilt, the law requires that the defendant be given the benefit of the doubt, and you must then adopt the theory of innocence and render a verdict of not guilty as to the defendant, Harry Braverman.

16. I charge you ladies and gentlemen of the jury, that there has been some testimony here introduced relative to certain conversations between the defendant, Harry Braverman, and the defendant, Henry Skampo, relative to the ownership and operation of a still in the City of Romulus in the State of Michigan, but that in your consideration of the charges here filed, you cannot consider that illegal enterprise inasmuch as it relates to a separate offense than is here charged.

17. I charge you ladies and gentlemen of the jury, that in considering the charges here laid against the defendant, Harry Braverman, that it is necessary for the Government to show that there is no innocent theory possible, which will without violation of reason accord with the facts presented. You may not presume circumstances, as fact mak-

[fol. 42] ing up the chain of circumstances must be proven beyond a reasonable doubt, and if the Government fails to prove any one link making up that chain of circumstances, the defendant, Harry Braverman; should not be convicted and you should render a verdict of not guilty as to him.

Respectfully submitted, Donald B. Frederick, Attorney for Defendant, Harry Braverman. Business Address: 1114-1118 Buhl Building, Detroit, Michigan. Randolph 3209.

Dated: Detroit, Michigan, June 8, A. D. 1940.

[fol. 43] IN UNITED STATES DISTRICT COURT

VERDICT OF THE JURY—Filed June 13, 1940

The defendants Harry Braverman, Allen Wainer, Morris Frank, Fred Stevens, James J. Barrett and Harry Klein being present in Court, and the jury heretofore empaneled being again in Court, and having heard the proofs and testimony of witnesses, the arguments of counsel and the charge of the Court, retire from the Bar thereof, under the charge of officers duly sworn for the purpose, to consider their verdict; and after being absent for a time, come into Court again and in the presence of the defendants say upon their oaths that they find the defendants Harry Braverman, Allen Wainer, Morris Frank and Harry Klein guilty as charged, and they further find that they cannot agree upon a verdict as to defendants James J. Barrett and Fred Stevens.

Thereupon, the Court does now here order the sentences of the defendants Harry Braverman, Allen Wainer, Morris Frank and Harry Klein deferred to June 17, 1940, and the appearance bonds of all defendants continued in full force and effect.

Edward J. Moinet, District Judge.

[fol. 44] IN UNITED STATES DISTRICT COURT

SENTENCE OF THE COURT AS TO HARRY BRAVERMAN—Filed June 17, 1940 .

The defendant, Harry Braverman, being present in Court, and being represented by Donald B. Frederick, his

Attorney, and having been found guilty, by Jury, of the charges in said indictment contained, and being before the Bar of the Court for sentence, and inquired of by the Court if he had anything to say why sentence should not be imposed, and the Court having fully considered all that said defendant had to say in his behalf, thereupon the Court does now sentence said defendant, Harry Braverman, alias "Hunky" Braverman to be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a Penitentiary for and during the term and period of eight (8) years, beginning on the date on which he is received at the Penitentiary for service of said sentence; or if said prisoner shall be committed to a Jail or other place of detention to await transportation to the place at which his sentence is to be served, said sentence shall begin on the date on which he is received at such Jail or other place of detention, and to pay a fine to the United States of two thousand (\$2000.00) dollars, and to stand committed until such fine shall have been paid, or until he shall be otherwise discharged by due course of law. It is further ordered that the appearance bond of said defendant in this cause be, and the same hereby is cancelled.

Edward J. Moinet, U. S. District Judge.

Approved as to form: John C. Lehr, U. S. Attorney, by
Louis M. Hopping, Asst. U. S. Attorney.

[fol. 45] IN UNITED STATES DISTRICT COURT

SENTENCE OF THE COURT AS TO ALLEN WAINER—Filed
June 17, 1940

The defendant, Allen Wainer, being present in Court, and being represented by John E. Dougherty, his Attorney, and having, on June 13, 1940, been found guilty, by Jury, of the charges in said indictment contained, and being before the Bar of the Court for sentence, and inquired of by the Court if he had anything to say why sentence should not be imposed, and the Court having fully considered all that said defendant had to say in his behalf, thereupon the Court does now sentence said defendant, Allen Wainer,

alias Al Wainer, alias Joe Burns, alias J. Lipkin, alias Mr. Rogers, alias Frank Stein, alias Harry Stein, alias A. J. Parker to be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a Penitentiary for and during the term and period of eight (8) years, beginning on the date on which he is received at the Penitentiary for service of said sentence; or if said prisoner shall be committed to a Jail or other place of detention to await transportation to the place at which his sentence is to be served, said sentence shall begin on the date on which he is received at such Jail or other place of detention, and to pay a fine to the United States of two thousand (\$2000.00) dollars, and to stand committed until such fine shall have been paid, or until he shall be otherwise discharged by due course of law. It is further ordered that the appearance bond of said defendant in this cause be, and the same hereby is cancelled.

Edward J. Moinet, U. S. District Judge.

Approved as to form: John C. Lehr, U. S. Attorney, by Louis M. Hopping, Asst. U. S. Attorney.

[fol. 46] IN UNITED STATES DISTRICT COURT

SENTENCE OF THE COURT AS TO MORRIS FRANK—Filed
June 17, 1940

The defendant, Morris Frank, being present in Court, and being represented by Alfred May, his Attorney, and having, on June 13, 1940, been found guilty, by Jury, of the charges in said indictment contained, and being before the Bar of the Court for sentence, and inquired of by the Court if he had anything to say why sentence should not be imposed, and the Court having fully considered all that said defendant had to say in his behalf, thereupon the Court does now sentence said defendant, Morris Frank, alias Maurice Frank to be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a Penitentiary for and during the term and period of eight (8) years, beginning on the date on which he is received at the Penitentiary for

service of said sentence; or if said prisoner shall be committed to a Jail or other place of detention to await transportation to the place at which his sentence is to be served, said sentence shall begin on the date on which he is received at such Jail or other place of detention, and to pay a fine to the United States of two thousand (\$2000.00) dollars, and to stand committed until such fine shall have been paid, or until he shall be otherwise discharged by due course of law. It is further ordered that the appearance bond of said defendant in this cause be, and the same hereby is cancelled.

Edward J. Moinet, U. S. District Judge.

Approved as to form: John C. Lehr, U. S. Attorney, by
Louis M. Hopping, Asst. U. S. Attorney.

[fol. 47] Supersedeas Bond on Appeal for Harry Braverman for \$5000 approved and filed June 18, 1940, omitted in printing.

[fol. 48] Supersedeas Bond on Appeal for Allen Wainer for \$5000 approved and filed June 18, 1940, omitted in printing.

[fol. 49] IN UNITED STATES DISTRICT COURT

ELECTION OF MORRIS FRANK TO ENTER UPON SERVICE OF SENTENCE PENDING APPEAL—Filed June 27, 1940

The undersigned, defendant and appellant, hereby elects to enter upon the service of his sentence in this cause pending the disposition of this appeal.

Morris Frank, Appellant.

Dated: June 22, 1940.

IN UNITED STATES DISTRICT COURT

Notice and Grounds of Appeal of Harry Braverman and Allen Wainer—Filed June 18, 1940

NOTICE OF APPEAL

Names and addresses of appellants:

Harry Braverman, 4840 North Kimball Street, Chicago, Illinois.

Allen Wainer, 823 Buena, Chicago, Illinois.

Names and addresses of appellants' attorneys:

Donald B. Frederick, 1114-1118 Buhl Building, Detroit, Michigan.

John E. Dougherty, Peoria, Illinois.

Offense:

An indictment containing seven counts, each of which charged a conspiracy between the defendants and other named persons to violate the Internal Revenue Laws of the United States with reference to the illicit alcohol business. The conspiracy in each count was charged to have existed between the first of November, 1935 to the first of September, 1939.

Count 1 charged the defendants and other named persons with conspiracy to unlawfully carry on the business of wholesale and retail liquor dealers without having paid the special occupational tax stamp.

Count 2 charged the conspiracy between the same named persons to unlawfully possess distilled spirits, the containers thereof not having affixed thereto stamps denoting the quantity of distilled spirits.

Count 3 charged the conspiracy to transport distilled spirits.

Count 4 charged the conspiracy to engage in and carry on the business of distillers in violation of law.

Count 5 charged a conspiracy to remove, deposit and conceal distilled spirits with the intent to defraud the United States of the tax thereon.

Count 6 charged a conspiracy to possess a still and distilling apparatus.

Count 7 charged a conspiracy to unlawfully make and ferment, and cause to be made and fermented, mash, wort and/or wash.

Date of Judgment:

June 17, 1940.

Brief description of sentences:

Harry Braverman, To serve in a Federal institution to be designated by the Attorney General of the United States the full period of eight years from and including this date, and to pay a fine in the sum of Two Thousand Dollars (\$2,000.00).

Allen Wainer, To serve in a Federal institution to be designated by the Attorney General of the United States the [fol. 51] full period of eight years from and including this date, and to pay a fine in the sum of Two Thousand Dollars (\$2,000.00).

Name of prison where now confined:

The defendants are at present confined in the custody of the United States Marshal at Detroit, Michigan.

We, the above named defendants and appellants hereby appeal to the United States Circuit Court of Appeals for the Sixth Circuit, from the judgment and sentence above mentioned, on the grounds set forth below.

Harry Braverman. Allen Wainer.

Dated: Detroit, Michigan, June 17, 1940.

GROUND OF APPEAL

Now come the above named defendants and appellants by and through their attorneys, Donald B. Frederick and John E. Dougherty, and set forth the following as a succinct statement of the grounds of appeal in this cause:

I

That the court erred in overruling the defendants' motion for a directed verdict of not guilty made at the conclusion of the Government's case.

II

That the court erred in overruling the defendants' motion for a directed verdict of not guilty made at the conclusion of the Government's case and which required that the Government either elect upon which count of the indictment they desired to have the case submitted to the jury, or the court to direct the jury to find the defendants [fol. 52] not guilty as to those counts where there was no evidence that either proved or tended to prove their participation in the conspiracy charged.

III

That the court erred in overruling the defendants' motion for a directed verdict of not guilty made at the conclusion of the Government's case, wherein it was urged that the Statute of Limitations had run as to the defendants and appellants herein.

IV

That the court erred in overruling the defendants' motion for a directed verdict of not guilty made at the conclusion of the Government's case and which urged that the testimony as presented showed but one conspiracy, and that other than the conspiracies charged in this indictment.

V

That the court erred in overruling the defendants' motion for a directed verdict of not guilty made at the conclusion of all the evidence in the case.

VI

That the court erred in refusing to give the defendants' request to charge number 1.

VII

That the court erred in refusing to give the defendants' request to charge number 2.

VIII

That the court erred in refusing to give the defendants' request to charge number 3.

[fol. 53]

IX

That the court erred in refusing to give the defendants' request to charge number 4.

X

That the court erred in refusing to give the defendants' request to charge number 5.

XI

That the court erred in refusing to give the defendants' request to charge number 6.

XII

That the court erred in refusing to give the defendants' request to charge number 7.

XIII

That the court erred in refusing to give the defendants' request to charge number 8.

XIV

That the court erred in refusing to give the defendants' request to charge number 9.

XV

That the court erred in refusing to give the defendants' request to charge number 10.

XVI

That the court erred in refusing to give the defendants' request to charge number 11.

XVII

That the court erred in refusing to give the defendants' request to charge number 12.

[fol. 54]

XVIII

That the court erred in refusing to give the defendants' request to charge number 13.

XIX

That the court erred in refusing to give the defendants' request to charge number 14.

XX

That the court erred in refusing to give the defendants' request to charge number 15.

XXI

That the court erred in refusing to give the defendants' request to charge number 16.

XXII

That the court erred in refusing to give the defendants' request to charge number 17.

XXIII

That the court erred in imposing a general sentence of eight years imprisonment and a fine of Two Thousand Dollars (\$2,000.00).

Wherefore, the appellants pray that the judgment of the District Court may be reversed.

Donald B. Frederick, John E. Dougherty, Attorneys
for Appellants.

[fol. 55] IN UNITED STATES DISTRICT COURT

**Notice and Grounds of Appeal of Morris Frank—Filed
June 21, 1940**

NOTICE OF APPEAL

Name and Address of Appellant: Morris Frank, 419
South Wells, Chicago, Illinois.

Name and Address of Appellant's Attorney: Alfred A.
May, 1959 National Bank Bldg., Detroit, Michigan.

Offense:

Conspiracy to violate United States Internal Revenue
Laws charging seven counts:

1. In that the defendant did conspire to carry on the business of wholesale and retail liquor dealers without having the special occupational tax stamp as required by law.

2. In that the defendant did conspire to possess distilled spirits, the immediate containers thereof not having affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits.

3. In that the defendant did conspire to transport large quantities of distilled spirits, the immediate containers thereof not having affixed therein and evidencing payment of all Internal Revenue taxes imposed on such spirits.

4. In that the defendant did conspire to engage in and carry on the business of distillers without having given bond as required by law and with the intent on the part of the said aforementioned defendant and co-conspirators to defraud the government of the United States of America of the tax on spirits which would be distilled by the said aforementioned defendant and co-conspirators.

[fol. 56] 5. In that the defendant did conspire to remove, deposit and conceal distilled spirits in respect whereof a tax was then and there imposed by the laws of the United States, with intent to defraud the United States of such tax.

6. In that the defendant did conspire to possess and cause to be possessed, keep in custody control and cause to be controlled certain still and distilling apparatus for the production of distilled spirits, and would set up and cause to be set up the said aforementioned stills and distilling apparatus without having the same registered with the District Supervisor of the Alcohol Tax Unit, Bureau of Internal Revenue, as required by law and regulations.

7. In that the defendant did conspire to make and ferment and cause to be made and fermented large quantities of mash, wort, and/or wash, to-wit: 37,500 gallons of mash, a mixture and compound fit for distillation and the production of distilled spirits, in a building and on premises which would not be then and there a distillery or premises duly authorized and designated according to law as a distillery.

Dates of Judgment: June 17, 1940.

Brief Description of Judgment or Sentence:

Defendant was sentenced to imprisonment for eight years and fined two thousand (\$2,000.00) dollars.

Name of Prison Where Now Confined: Wayne County Jail at Detroit, Michigan.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Sixth Circuit from the judgment above mentioned in the grounds set forth below.

Morris Frank, Appellant.

Dated: June 21, 1940.

[fol. 57]

GROUND OF APPEAL

The above named defendant sets forth the following Grounds of Appeal:

1. That the verdict of the Jury was taken in the absence of the defendant and which is respectfully contended to constitute error.

2. That the Court erred in refusing to order the Government to produce the original statements taken from Clarence Dracka and Henry Skampo, who were charged as co-conspirators with the appellant and who testified against the appellant, and the original statements were requested to test the credibility of said witnesses which request the Court denied and which is respectfully contended to constitute error.

3. That the Court erred in sentencing the appellant to serve eight (8) years and to pay a fine of two thousand (\$2,000.00) dollars, in that said sentence is excessive.

4. That the Court erred in refusing to consolidate the seven counts in the indictment to one general count the alleged violation of the seven separate acts involved constitute but one conspiracy and but one crime.

5. That the Court erred in denying a motion for directed verdict on behalf of the defendant and appellant predicated upon the grounds that there was no substantial evidence to be submitted to the jury.

6. That the Court erred in sentencing this defendant in that the defendant was convicted of but one (1) conspiracy and but one (1) crime and not as charged.

7. That the verdict of the jury was against the great weight of evidence and there was no substantial evidence to be submitted to the jury.

8. That the Court asked the jury if it had arrived at a verdict on June 15, 1940, at approximately 9:00 in the [fol. 58] morning and was informed that the jury had not arrived at a verdict by the jury. The Court then asked the jury as to whether or not they had arrived at a verdict as to any of the defendants, whereupon the Court received a reply in the affirmative. The Court then asked the jury as to which defendants a verdict had been arrived at. The foreman of the jury advised the Court that they had arrived at a verdict as to the defendants, Harry Braverman, Allen Wainer, Morris Frank, and Harry Klein, whereupon the Court asked the jury whether they could arrive at a verdict as to the other two defendants, Fred Stevens and James J. Barfett, and was advised by a number of jurors that they could not arrive at a verdict as to those defendants. The judge accepted the verdict as to the four (4) defendants, namely Harry Braverman, Allen Wainer, Morris Frank and Harry Klein, all in the absence of your defendant and appellant, Morris Frank, which is respectfully contended constitutes error.

9. That the Court erred in denying a Motion requiring the Government to elect upon which of the counts they were going to proceed and in refusing to compell the Government to proceed upon one count, since all the counts set forth but one crime.

10. That the Court erred in denying the motion for directed verdict based upon the contention that the statute of limitations had run against the alleged crime.

[fol. 59] IN UNITED STATES DISTRICT COURT

Bill of Exceptions—Filed February 27, 1941

The above cause came on to be heard before the Honorable Edward J. Moinet, one of the District Judges of the United States Court for the Eastern District of Michigan, on Tuesday, the 14th day of May, A. D. 1940.

Appearances: Louis M. Hopping, Assistant U. S. Attorney, on behalf of the Government; Donald B. Frederick, on behalf of the defendant, Harry Braverman; John E. Dougherty, on behalf of the defendant, Allen Wainer; Alfred A. May, on behalf of the defendants, Harry Klein and Morris Frank; Thomas J. Cavanagh and Arthur Fischer, on behalf of the defendants, Fred Stevens and James J. Barrett.

The defendant, Allen Wainer, waived the presence of his counsel, John E. Daugherty, at the beginning of the trial and appeared in pro per until Mr. Daugherty presented himself during the trial.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Frederick: I wonder, before drawing a jury—I would like to make a motion the Government be required to elect upon which of the counts they are going to proceed to prosecution. There being seven separate conspiracy counts, I feel the counts and the nature of them require an election upon one, rather than all of the seven counts.

Mr. Hopping: Your Honor, we are relying upon the authority of the Fleischer case in this district, and other cases, to the effect that an indictment charging several counts of conspiracy to violate different sections of the Internal Revenue laws, is a good indictment on any or all counts, and in this case—

The Court: You are relying upon all of them?

Mr. Hopping: We are relying upon all of them.

The Court: Motion is denied.

Mr. Frederick: Exception noted.

Mr. May: In order to shorten the case, we would like to request that it be understood when one counsel makes [fol. 60] an exception, we don't all have to jump up and do the same thing.

The Court: Let the record show that the exception will apply to all defendants.

Mr. May: Continuously throughout the trial, so we won't have to jump up.

The Court: And one counsel can make the objections.

The jury was duly empaneled and sworn on said date and following the opening statement by the Assistant District Attorney, the following proceedings were had:

Mr. Frederick: The defendant, Braverman, will waive an opening statement. However, at this time I wish to renew my motion for the Government to elect upon which count of the indictment they will proceed, or they desire to proceed. Based upon the opening statement, the statement is set out by stating that they were going to show a conspiracy to do all of these particular acts. The ground the statement relied upon—conspiracy—if that is true, I think we should know on which conspiracy charge they rely.

The Court: Motion denied.

Mr. Frederick: Exception.

SKAMPO, HENRY, a witness called on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hopping:

My name is Henry Skampo. I am a defendant in this case and have entered a plea of guilty.

In the fall of 1935, I lived in Wyandotte, Michigan. About the fall of 1935, I went to 9666 Grand River avenue, Detroit, Michigan, and met Harry Klein. I first met him about that time. The Harry Klein I speak of is one of the defendants on trial. At the time I met him, I was engaged in handling illegal alcohol. I imagine I talked with him about alcohol or distilleries for making alcohol. [fol. 61] In the fall of 1935, at 9666 Grand River avenue, I was introduced to Harry Braverman by Harry Klein. He is one of the defendants here on trial. I do not recall the entire conversation Klein, Braverman, and I had, but we were having trouble out at a still I had an interest in, in Romulus.

Q. Who else was interested in it besides you?

Mr. Frederick: I wish to note an exception to a reference to a conversation relating to a Romulus still. There is nothing in this indictment charging conspiracy to operate a still in Romulus, and it relates to an offense other than that with which the defendants are here charged.

Mr. Hopping: The indictment charges conspiracy to manufacture alcohol in a distillery, and we expect to show that this agreement began then and continued on, with respect to a great many things in connection with the alcohol business.

Mr. Frederick: However, the indictment charging conspiracy is separate, where the conspiracy is alleged to have existed and no mention is made of this, and I submit it relates to an offense other than that here set forth.

The Court: He may answer. Read the question.

Mr. Frederick: I would like to note an exception.

Clarence Dracka who is here in the courtroom was interested with me in this still.

Q. Will you continue and tell us the substance of the conversation you had with Harry Braverman regarding alcohol, after you were introduced to him by Harry Klein?

A. Regarding alcohol?

Q. Yes.

A. Regarding the manufacture of alcohol?

Q. Yes.

A. Well, the understanding, the original agreement, or the original understanding at the meeting was

Mr. Frederick: I object to the conclusion of the witness.

The Court: State what was said and done by all the parties present. Where was this? Grand River? Just state, as nearly as you can, the conversation out there between you.

Mr. Cavanagh: May I note an objection on behalf of the defendants, Barrett and Stevens? They were not present, [fol. 62] ent, and certainly any conversation out of their presence would not be binding upon them.

Mr. Frederick: The same objection.

Mr. Morris Frank: I object on behalf of myself. I would like to have it understood that I was never present at any of their meetings.

The Court: Just a moment. You should not make a statement like that. You are not an attorney, and that arises sometimes to the quality of evidence. That is your statement made here in the presence of this jury. You may make an objection at any time you wish, and the Court will rule upon it, but don't make statements with

reference to the evidence. Now, is there anything else in there?

Mr. Frederick: I understood, your Honor, that one objection made by counsel, the other counsel would benefit.

The Court: I did not hear you.

Mr. Frederick: I understood, your Honor had held at the commencement of the trial that one objection made by counsel, the other counsel would obtain the benefit of it without making a formal objection.

The Court: There was something said that one counsel should make objections, and if there are—

Mr. Frederick: That was not our understanding. We did not want to be jumping up every minute and making objections.

The Court: No, I did not say if one counsel would make objections, that would be for all. I would like to have you, if counsel gets up and makes an objection, understand it applies only to his client. There would be no law preventing you from an objection for all.

Mr. Frederick: An objection for one counsel would be for all counsel here.

The Court: I do not remember about that. That is pretty broad. The opening statement by the Government, there were different statements made throughout the country, and it is the claim of the Government, according to the opening statement, that they propose to prove there were different conversations had at different places—in Chicago, in Cleveland, in Detroit, and all over. Now, I [fol. 63] would not really want an exception that broad. I think the only practical way, I suppose—the only practical way is to make your own objections. That is all. It may be somewhat burdensome and annoying to all of us, but I do not want counsel to appear to be ill at ease by getting up to make objections, because I am assuming that counsel always, in making an objection to the Court, as to evidence that is offered here, has an equal right to make that objection, and no improper inference should be drawn against him. So, you will have to make your own objections.

Mr. May: Then I will take an exception on behalf of defendant Klein.

Mr. Fischer: And, if the Court please, may the other objections up to now, which were not joined in by Mr. Cavanagh and myself on behalf of Mr. Stevens and Mr. Barrett, will join as objections in their behalf, on because

that was our understanding as counsel has pointed out. Otherwise, I would have to go back this evening and read the record.

The Court: You will have to check the record because I do not want to grant any omnibus exceptions. Go ahead.

When I met Braverman, he wanted to know if we were interested in selling the Romulus still. I said I thought we were if we could get the right price. Harry Klein was present at this time. A deal was made. Clarence Dracka was not present. I was dealing for Dracka and myself. We got a thousand dollars deposit from Mr. Braverman. This was at the Grand River Bowling Alley.

Mr. Frederick: I wish to note an exception to the testimony as to the Romulus still.

The Court: Objection overruled.

Mr. Frederick: Exception.

Mr. May: The same objection.

I took Mr. Braverman out to the Romulus still. I don't remember who else went along. I just showed him the still. The next thing that happened was that there was a misunderstanding with the landlord about the rent and I had to return the money to Mr. Braverman. I was going to sell the still with the understanding that the lease would continue. After I made the deal with Mr. Braverman, the [fol. 64] landlord wanted to raise the price of the lease. Braverman objected and I had to return his money. Thereafter I again tried to sell the still to Braverman and we entered into an agreement. I could not say where that agreement was made though the majority of my meetings with Mr. Braverman were out on Grand River avenue at the bowling alley. That is 9666 Grand River avenue.

Mr. Braverman made me a percentage proposition and I accepted it. I don't recall what it was. It was with the understanding that he was going to enlarge the place and fix it up.

The next thing that happened was that the still was seized. This was sometime in the fall of 1935. After this seizure, I again saw Harry Braverman at 9666 Grand River avenue and had a conversation with him. I do not recall if anyone else was present. At that time, he wanted to know if he sent out alcohol over to me, if I would dispose of it. I told him I thought I could. All he wanted

of me was an address. I told him I would get busy and get one. A couple of weeks later, though I do not know where he was when I told him; I gave him the Wyandotte Storage and Cartage Company, Wyandotte, Michigan. William Cheplick, who is in the court room, was the operator of that business. I was located on Biddle avenue, though I don't recall the number.

I do not recall Harry Braverman saying anything to me regarding the shipment of alcohol up to the time I gave him this address. Before I gave Harry Braverman the address, I talked with William Cheplick.

Q. Will you tell us what you said to William Cheplick and what he said to you?

Mr. Frederick: I object to that, on behalf of the defendant Braverman, not being made in his presence, not being binding against him.

The Court: Objection overruled.

Mr. Cavanagh: May I renew my motion at this time on behalf of the defendant Stevens and defendant Barrett as to all of these conversations.

The Court: The same ruling.

Mr. Cavanagh: Exception.

[fol. 65] This was in the fall of 1935. I asked William Cheplick if he would handle some shipments for me and he said he would. The shipments were to be handled from Biddle avenue, or the garage located between 4th and 5th in Wyandotte. I told William I had some boxes coming in and asked if it would be all right to have them consigned to his address. When they arrived, if he would pick them up and take them over to the address of the garage in the alley. He said he would and I paid him accordingly. I think I paid him possibly fifty cents for a haul. It was possibly two or three weeks after my talk with Cheplick that I received the shipments at the garage. I received some alcohol and I cannot recall how much. It would be in a wooden box, six five gallon cans to a box. There were no tax stamps on them. I did not have a license to deal in alcohol either wholesale or retail. I did not have any kind of a license to go into the alcohol business at that time. When the first shipment arrived I opened the boxes, took the cans out and sold them. I wired the money to Chicago. Mr. Braverman gave me the address in Chicago where to send the money when I sold the merchandise.

Exhibit 1 relates to the shipment I have just described. I imagine I first saw it at the garage in Wyandotte. I do not recognize any writing on the exhibit.

Mr. Hopping: I will offer Exhibit 1 in evidence your Honor.

The Court: I didn't hear any objection. It will be received.

Mr. Cavanagh: In behalf of the defendants Barrett and Stevens, I object to the admissibility of this, on the ground that in no way it indicates or links them up with this alleged conspiracy. And on the further ground it is not the best evidence of any alleged shipment. On the further ground the consignor has not in any way been involved in this case.

Mr. Rich: The defendant Cheplick has no objection to the introduction of that Exhibit 1.

Mr. Frederick: An objection, for the same reasons stated by Mr. Cavanagh on behalf of the defendants Barrett and [fol. 66] Stevens, and also, that it does not appear, not sufficient testimony from this witness whereby he can identify it. And it appears that it is a typewritten instrument, and he testified that he does not recognize the handwriting on it, and I submit that is not sufficient to identify the Exhibit.

Mr. May: The same objection as Mr. Cavanagh, if the Court please.

The Court: What do you claim for this? I do not know what it means.

Mr. Hopping: I expect to further identify it with respect to other matters.

The Court: Did this man get it?

Mr. Hopping: Yes. He testified to it.

The Court: Why don't you show it?

Mr. Hopping: I understood he testified to it.

The Court: From whom did he receive it?

By Mr. Hopping:

Q. From whom did you receive Exhibit 1?

A. Wyandotte Cartage Company.

Q. What person, if you know?

A. William delivered it.

Q. William Cheplick?

A. Yes.

Q. To you?

A. Yes.

Q. Now, prior to receiving Exhibit 1 and the shipment of alcohol, did you have some conversation with anyone as to the markings, if any, that would be on such shipments?

A. No, there was no understanding as to that.

Mr. Frederick: I object to leading the witness.

The Court: He said he did not have any.

Mr. Frederick: I realize the answer was "no."

The Court: It may be received.

Mr. Frederick: Exception.

Mr. May: Exception.

I can identify Exhibit 3. I received it from Mr. Braverman. This was in Wyandotte, Michigan, on January 16th, 1936. At the time I received it, only Mr. Dracka was there. After receiving Exhibit 3, I opened the wooden [fol. 67] box which I received from the Wyandotte Cartage Company and sold the merchandise. The box contained alcohol. There were six cans to a box. After selling it, I wired the money to Chicago. I do not recall talking to anyone regarding this alcohol during the time I received these shipments. I continued to get shipments for about two months or two months and a half. As I received them I would sell them and send the money to Chicago.

In the spring of 1936 the shipments discontinued coming. I called up Mr. Braverman. He said he could not make any money and was absolutely quitting. As near as I can recall, I had received possibly ten or twelve shipments up to the time of this conversation. They came over the Roadway Transit Trucking Lines. The Wyandotte Cartage Company would pick them up and bring them over to us. I believe there was a shipment or two over the Cushman.

I did not have any subsequent conversation with Harry Braverman about those shipments.

Exhibits 3 and 5 relate to shipments of alcohol which I discussed with Harry Braverman. These shipments were received from the Wyandotte Cartage Company at Biddle avenue, Wyandotte. I received delivery of them from William Cheplick.

(Exhibits 3 and 5 offered in evidence.)

The conversation I had with Harry Braverman was in the spring of 1936 on the telephone. After Braverman went

out of business in the spring of 1936, I contacted Mr. Wainer. I do not recall where. It was in Michigan. It had to be either Wyandotte or Detroit. I am under the impression that it was at 9666 Grand River avenue, but I would not say for certain. The Mr. Wainer I am talking about is a defendant here on trial.

Q. State that conversation.

Mr. Cavanagh: If the Court please, may we have the objection in behalf of the defendants Barrett and Stevens with reference to this conversation, out of their presence?

The Court: Same ruling.

Mr. Frederick: And the same, as to the defendants Braverman and Mr. Spigutz, and exception.

Mr. Fischer: The same objection.

[fol. 68] Mr. Wainer said he understood we had been getting some alcohol and that we could not get any now. If he could secure some and forward it to us, could we handle it. We told him we could. When I say "we," I mean Mr. Dracka and myself. I do not recall if anyone else was present at the time of this conversation; nor do I recollect if I saw Harry Klein that day. It was agreed that the shipments were to be boxed with so many cans to a box and sent over the Motor Freight Lines. As soon as we received the merchandise, we were to sell it and wire him the money the same method as we had been doing. That was all of the conversation.

We received the shipments from Al Wainer for a period of two or three months as I recall. That was in the spring of 1936. I am pretty sure they were received through the Wyandotte Trucking and Storage Company.

Mr. Cavanagh: May I note an objection to Exhibits 3 and 5, and the further objection it is self-serving, that they are not the best evidence; that they are not identified as being the original shipping order and the bill of lading.

The Court: They may be received.

Mr. Frederick: Note an exception, and the same objection.

I unpacked the shipments so received at Wyandotte. They were consigned to the Perfect Carpet Cleaners, Wyandotte, Michigan. The consignor was named Rug Life, Chicago. On a couple of occasions, I picked them up at the dock. On other occasions they were delivered by the Wyan-

dotte Cartage Company. I would uprate them and sell the merchandise and wire the money back to Chicago.

I identify Exhibit 13 by my signature which appears at the bottom. I signed it at the Roadway Transit Company in connection with the receipt of one of the shipments.

We received the shipment described on Exhibit 12 from the Wyandotte Cartage Company. I unpacked it and delivered the contents. It was alcohol. The name of the consignor of this shipment was Rug Life and the consignee was Perfect Carpet Cleaners, Wyandotte, Michigan.

[fol. 69] I recognize Government's Exhibit 11 by my signature. On this shipment I went to the Wyandotte Cartage Company and said there was a shipment at the Roadway Transit in Detroit and I would like them to pick it up. I went along with them, signed for the merchandise. He picked it up and delivered it to us. When I speak of the Wyandotte Cartage Company, I refer to William Cheplick. There was alcohol in this shipment.

I recognize Government's Exhibit 10, having received it from the Wyandotte Cartage Company at Wyandotte, Michigan, at the same time I received a shipment of alcohol marked the same way as the others. I delivered it.

I identify Exhibit 9 as being consigned to the Perfect Carpet Cleaners, Wyandotte, Michigan, from the Rug Life, Incorporated, Chicago. It was delivered to us by the Wyandotte Cartage Company. Their signature appears on there. I am not familiar with that signature. I don't know who made it. I received the shipment.

I identify Exhibit 8. I received it from the Wyandotte Cartage Company and also received the shipment described on it. It contained alcohol which I delivered. The package was marked the same way as the others.

I identify Exhibit 7 and received the package there described from the Wyandotte Cartage Company. It was alcohol. I delivered the contents. It was marked similarly to the others. There were no tax stamps on any of the containers.

The alcohol described in Exhibits 7 to 13 was all part of the alcohol I received from Al Wainer over the period of time I have referred to. At the end of that time I had a telephone conversation with Al Wainer. We said we wanted some more alcohol. Mr. Wainer was not able to get it and he said he was quitting the business. He said he was all through. There was not anything I could say to him.

After that conversation we had alcohol customers and did not have any merchandise for them. One day I happened to be out at 9666 Grand River avenue and got in touch with Mr. Klein to see if he would happen to know of anybody that had some alcohol. He said he did not know of anyone [fol. 70] but that if he did find anybody he would refer them to us. About two weeks after that we got a telephone call from Harry Klein saying there was a party in town with a load of alcohol and wanted to know if we wanted it.

Q. Did you recognize the voice of Harry Klein on the telephone?

A. I did.

Q. What did he say to you, and what did you say to him?

Mr. May: Let's have the time.

The Court: After the first talk with Klein.

Mr. Cavanagh: May my motion, with respect to the defendants Stevens and Barrett, concerning the various conversations, continue on?

The Court: No.

Mr. Cavanagh: And I will move that any conversation with anybody had, not in the presence of Barrett and Stevens—

Mr. Frederick: I wish to make the same objection as to the defendants Braverman and Spigutz.

The Court: The same ruling; motion denied.

Mr. Frederick: And exception.

After the telephone conversation Dracka and I drove up to 9666 Grand River avenue and purchased the load of alcohol. At that time I saw Harry Klein there. I imagine I got one load of approximately twenty-five, five gallon cans from the driver. I do not know who the driver was. I had no further conversation regarding this alcohol. There were no tax stamps on them. We sold the contents of these cans. No one else was present when I paid the driver for them. I would say it was in the neighborhood of eleven dollars for each five gallon can. After this we could not get any merchandise. By merchandise I mean alcohol or high proof moon. Dracka and I then drove to Chicago. This was toward the fall of 1936. We did not test the contents of these cans though occasionally we would look at a can and see that it was alcohol.

When we got to Chicago we looked up Al Wainer. I do not recall where we saw him. We asked Mr. Wainer if he

[fol. 71] could get us some alcohol and he said he was entirely out of the business and could not do us any good. We started to look around a little bit, one place after another. We wanted to make arrangements for the warehouse. We talked with Mr. Wainer about that.

A. Mr. Wainer said he didn't know whether he could do us any good or not, but if he would refer us to Mr. Stevens, out at the warehouse, perhaps we could get that room and could continue, in the form he had been doing.

Mr. Cavanagh: On behalf of the defendants, Stevens and Barrett, I move that all the testimony be stricken, as out of the presence of the defendants.

The Court: Motion denied.

Mr. Cavanagh: Exception.

Mr. Frederick: The same as for defendants, Braverman and Spigutz.

Dracka and I then drove to the Empire Warehouse and contacted Mr. Stevens. He is a defendant here on trial. I do not know the address of the warehouse or even what part of the city of Chicago it was in. It was a large brick warehouse. We told Mr. Stevens we had been recommended by a party, I have forgotten the name we used, and we would like to rent the room to forward some shipping. We did not tell him what kind of shipping. We told him we would like to use the same room that had been used, or court, or something, anyhow that they had. He said he did not know whether it could be done and would have to take it up with the head office.

At this conversation only Mr. Stevens, Mr. Dracka and myself was present. I am quite certain this was in the fall of 1936. Two days later, we went back there and again saw Mr. Stevens who said we could have the room. We went up to a room. Mr. Stevens took us up on the elevator. It was on the fifth floor. In the room were some stock boxes. There were no markings on the boxes. I do not recall anything else. I did not look very carefully.

I do not recall anything else that was said between Mr. Stevens, Mr. Dracka and myself. We did make arrangements to pay \$35.00 a month for the room and there was [fol. 72] some back rent we agreed to take care of. I don't remember how much was due, but it was in the neighborhood of \$100.00 or better. Mr. Stevens asked us for the back rent. We paid it, or rather Mr. Dracka paid it. I do

not know to whom it was paid or what period of time it covered. I imagine it was for the room we were occupying.

Through a friend of Mr. Dracka's we were introduced to Morris Frank, one of the defendants here. We met him downtown in Chicago.

Q. State what conversation you had with Morris Frank.

Mr. Cavanagh: If the Court please, on behalf of defendants, Barrett and Stevens, I renew my motion about these conversations, out of the presence of Barrett, and out of the presence of Stevens.

The Court: Motion denied.

Mr. Cavanagh: Exception.

Mr. Frederick: The same objection.

The Court: Same ruling.

Mr. Frederick: Exception.

We told Frank we would like to get some alcohol. He said he did not have any but possibly could locate some for us. There was no other conversation and I left a day or two after that for Detroit. Dracka stayed in Chicago.

I next went out and rented a room at the Mack Avenue Storage Company in Detroit. I do not know who operates that company. I saw a young lady at the office. I had not talked to anyone before going there. After I rented the space, I telephoned Chicago and gave the address to Mr. Dracka. Dracka started to forward alcohol. It came in boxes consigned to Perfect Carpet Cleaners, care of Mack Avenue Storage Company. There were six five gallon cans in a box. Upon receipt of them, I uncased them and sold the merchandise. The shipments would be consigned care of Mack Avenue Storage Company. The Roadway Transit Company would deliver them and the Mack Avenue Storage would have them set up in the space I had rented. I would open the boxes, take the merchandise out and take it out of there.

[fol. 73] I can identify Government's Exhibits 14 and 15, which relate to shipments I have just described. These shipments were received at the Mack Avenue Storage Company. I did not sign for them. They were signed for at the office. I left money at the office so they could pay the freight. That is at the office of the Mack Avenue Storage. I have no idea how many shipments were so received. I identify each of Exhibits 14 through 57. They each relate to a shipment received in the manner just described by me.

Mr. Hopping: I ask that each of the documents be marked consecutively as Government Exhibits, beginning with Number 16.

(Thereupon, documents referred to were marked Government's Exhibits 16 to 57, inc., by the Reporter.)

Mr. Hopping: I offer in evidence Government's Exhibits 14 to 57, inclusive.

Mr. Frederick: I wish to note an objection to the introduction of all of these exhibits, upon the ground that the witness has not competently identified them, it not appearing that he in any way prepared them, or have they been in his control, save one exhibit, I think, on which he said his signature appears. That is Exhibit 11. As to the remaining, I submit they are self-serving documents, improper evidence and improperly admissible.

The Court: What are they, shipping bills?

Mr. Hopping: Yes, your Honor.

The Court: Received by him?

Mr. Hopping: Yes.

The Court: They may be received.

(Thereupon, documents, previously marked Government Exhibits 14 to 57, inc., were admitted into evidence.)

Mr. Frederick: Exception.

Mr. Cavanagh: The same objection as to the defendants Stevens and Barrett.

The Court: The same ruling.

Mr. May: The same objection and exception, for defendant, Klein, and I understand the District Attorney will produce the originals of the photostats.

Mr. Hopping: Yes, we expect to produce the originals.

I am not familiar with the appearance of the warehouse in Chicago, though I would recognize it.

[fol. 74] I identify Government's Exhibit 58. It does relate to the warehouse.

Mr. Hopping: I offer in evidence Government's Exhibit 58.

Mr. Cavanagh: No objection.

The Court: It will be received.

(Thereupon, the document previously marked Government's Exhibit 58 was admitted into evidence.)

Mr. May: I will object to it, on behalf of the defendant Klein. I claim it has no connection with the defendant Klein, and the exhibit is incompetent, immaterial and irrelevant, a self-serving document.

Mr. Frederick: I would like to make the same objection as to the defendants, Braverman and Spigutz.

Two or three other shipments went into Toledo. Government's Exhibits 59, 60, 61, 62, 63, 64 and 65 are identified by me as relating to shipments of alcohol received from Clarence Dracka. My signature appears on Exhibits 65, 64, 63. I signed for them at the time of receiving the shipments. They were received at Toledo, Ohio, over the Liberty Highway Company.

The shipments described in Exhibits 59, 60, 61 and 62 were received at Wyandotte, Michigan, from the Wyandotte Cartage Company. It was all alcohol.

At the time I received these shipments from Clarence Dracka in Chicago it covered from the fall of 1936 until the first of July, 1937. At that time we were not making any money so we quit. I then went to Chicago on two or three different occasions, picked up three or four cans of alcohol and drove them back to make a little expense money. Upon these occasions I did not see anyone in particular in Chicago. During the time leading up to July, 1937, I went back to Chicago on occasions. I stopped at the Park Hotel. I met Morris Frank once or twice. He is the defendant on trial. I met him at a horse bookie. There was no one else with him there at the time.

Q. What did you talk about with him, particularly, Mr. Skampo?

Mr. Cavanagh: If the Court please, on behalf of the defendants, Barrett and Stevens, I object to any conversation not in their presence.

[fol. 75] Mr. Frederick: The same objection as to defendants Braverman and Spigutz.

The Court: Objection overruled.

Mr. Frederick: Exception.

I asked Morris if there was any chance of making an alcohol connection. He did not know anybody inasmuch as he was not in the business at the time. I left, and coming back to Toledo I stopped at the Empire Warehouse to re-rent our room from Mr. Stevens. That was in late

1936 or 1937. I don't know. I saw Mr. Stevens, though I don't remember the date, but it was in the fall of 1937. I saw Mr. Stevens. He was at a restaurant having lunch. I ate lunch with him. I asked him if there was a chance to rent a room to do any shipping. He told me there were no rooms available. I did not see Clarence Dracka at that time. The last time I had seen him before that was around July, 1937. Stevens and I did not talk about Dracka. I did not see Stevens again. I do not recall any other conversation with Stevens regarding the warehouse where Dracka and I had rented a room. That was about the end of my alcohol career.

On the occasion that I got a few cans of alcohol in Chicago I transported them to Toledo and there sold them. I do not recall who it was that I bought this alcohol of. It cost me around \$10.00, \$10.50 and \$11.00 a can, and I sold it for as high as \$15.00.

Mr. Frederick: We wish to note, for the purpose of the record, the objection to these records.

The Court: What are these?

Mr. Hopping: Exhibits 59 to 65, inclusive.

The Court: These were offered and were referred to counsel.

Mr. Fischer: Yes. You did not rule on them.

The Court: What is the objection.

Mr. Frederick: The same objection as to the other exhibits.

Mr. Cavanagh: And the additional objection that there is nothing in this record to indicate the source of these exhibits, to indicate that the original exhibits—or as to who compiled these exhibits.

[fol. 76] The Court: They may be received.

(Thereupon, documents previously marked Government's Exhibits 59 to 65, inc., were admitted into evidence.)

Mr. Cavanagh: Exception.

Mr. Frederick: Exception.

I identify Exhibit 66 as the cover of one of the boxes of alcohol that was shipped in to the Mack Avenue Storage.

Q. Now. I asked you yesterday, if you recalled any further conversation that you had with the defendant Stevens, and you stated then you did not. At this time,

do you recall any further conversation that you had with the defendant Stevens?

Mr. Cavanagh: To which I object, if the Court please. The witness has already answered, and his recollection was exacted yesterday.

The Court: He may answer.

Mr. Cavanagh: Exception.

A. As I stated yesterday, it was in the Fall of 1937, so I want to change that to the Spring of 1938. On my way back to Toledo from Chicago, I stopped off to see Mr. Stevens. At that time I had lunch with him.

I asked Mr. Stevens if there was a chance of re-renting the room. He told me there was no room available and that they had discontinued that practice. He asked me how Don was. Don is Mr. Dracka. I told him that he was serving time for a still and he wanted to know how I got out of it so lucky. I told him I did not happen to be there. Dracka was using the name of Don Nelson in the warehouse in Chicago. Stevens told me there was no room available and the company had discontinued that practice.

Yesterday, when I mentioned the address 9660 Grand River avenue, I was referring to the Recreation Bowling Alley. I do not know who operated the bowling alley, but Mr. Klein operated a bookie at that location. When I testified it was 9660 Grand River, I meant 9666.

In connection with each of the shipments of alcohol received from Chicago, I paid for them by Western Union. I talked with whoever I was getting the shipments from about payment. The first shipment I received came from [fol. 77] Harry Braverman. He gave me an address where I could forward the money to, as soon as I disposed of the merchandise. I do not remember the name or address he gave me. The name I used in sending the money was no doubt Wilson. I do not recall what other names I used.

As to the shipments which came from Al Wainer, I talked with him about the method of sending the money. He gave me an address where to forward the money after I had disposed of the merchandise. I sent the money to the name and address he gave me. I do not recollect the address.

When I visited Harry Klein's place on Grand River, I occasionally saw other persons I knew in there. I cannot recall their names.

Cross-examination.

By Mr. Frederick:

At the present time, I live in Toledo, Ohio, and have there resided for twenty-five years. In 1935, I had a room in Wyandotte and a home in Toledo. At that time I was in business in Wyandotte. I have been arrested but have never been convicted. I could not say when I first engaged in the alcohol business. It has possibly been four or five years. I started in the neighborhood of 1934 and continued until 1938. I was in different branches of the business. In 1934, when I started, I was connected with a still in Monroe County, Michigan. I was in that about five months, as one of the partners. This still was seized by the government. I was not charged with the crime. I then again went into business in Wyandotte and was interested in a still at Romulus, Michigan. That is about twenty-four miles from Wyandotte. I continued as owner until this still was seized which was the Fall of 1935. I was not charged with that crime. I then went into the wholesale branch of the alcohol business. I so operated until the Spring of 1938. During that time there were no shipments of alcohol consigned to me that were seized by the federal agents. I had no difficulties with either federal or police raids.

[fol. 78] I have entered a plea of guilty in this case but have not as yet been sentenced. I did testify that I met Harry Braverman in 1935. I would not say just what time of the year it was. I don't remember. I would say it was the summer of 1935.

I discussed the sale of an interest in the still in Romulus to him. The deposit had to be returned. I would say my conversations with him covered possibly a month or a month and a half. I do not know just what months they took in. I could not say how many conversations I had. Possibly four or five. I did finally conclude the transaction with him whereby he was to buy an interest in the still. During the period of these conversations I was trying to operate this still, but Mr. Braverman had no part in it. The still was raided possibly two months after Mr. Braverman had agreed to purchase an interest in it. I do not recall what two months they were. I do not recall the time of year. I would say it was in the fall.

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I could not say how soon after this it was that I had a conversation with Mr. Braverman relative to shipments of alcohol. It was possibly a month. I do not know what month of the year it was but the conversation took place at 9666 Grand River. I could not say whether anyone else was present or not. 9666 Grand River avenue is a large building. It is a recreation room and bowling alley. There is also a bar and restaurant in front. There are also other rooms in the front. I do not know where in this place I had my conversation. We were discussing an illegitimate business enterprise. I do not remember who was present. I do not remember the exact language of that conversation. We did not discuss the amount of money that was to be divided between us. We did not discuss how much money might be derived as a result of the transaction. We did not discuss the amount of money that might be derived at any time. There was no discussion as to what money was to be cut up as a result of the shipments of alcohol from Chicago. The amount I sent for these shipments was a specified price per can. Mr. Braverman specified that at the time we made the deal. This was in the first conversation. I do not recall if I met him after that. After this [fol. 79] first conversation I talked with Mr. Braverman, though I don't recall whether it was in person or over the telephone. I would not say whether I personally saw him at Grand River after this conversation.

I identified Exhibit 1 in that it was consigned to the Wyandotte Cartage Company and I made arrangements for the shipment to be consigned to the Wyandotte Cartage Company.

Yesterday in court was the first time I ever saw the exhibit. There is nothing on it which bears my signature or marking. I do not know who prepared the exhibit. Being consigned to the Wyandotte Cartage Company identifies it to me. That is because the delivery receipt of the Cushman Motor Delivery has as the consignee the Palmer Distributing Company, care of the Wyandotte Cartage Company. That is the only reason I can identify it.

I identified Exhibits 3 and 5 in the same manner, that is, because the consignee is named as the Palmer Distributing Company, care of the Wyandotte Cartage Company. There is nothing else on the documents which identifies them to me.

I was supposed to be the Palmer Distributing Company, care of the Wyandotte Storage Company at Wyandotte. In 1936 there was no other Palmer Distributing Company. I know that from living in Wyandotte, though I did not check the records of the City Clerk, nor of the County Clerk. I feel in my own mind there was no other. I can say definitely that there was no other.

I would say that the dates appearing upon Exhibits 1, 3, and 5 are the correct dates of shipments that I received as a result of my talk with Mr. Braverman. That is, Exhibit 1 is dated January 30th, 1936, Exhibit 3 is dated January 15th, 1936 and Exhibit 5 is dated January 27th, 1936.

Pursuant to these receipts, I found the boxes which contained alcohol. I did not sample the cans on each of these shipments though I did on different shipments. I did on the first shipment which would be the one dated January 15th. I sampled it in the garage in Wyandotte by testing it with an alcohol gauge. I just tested one or two of the cans. I think it was a month or two after Mr. Braverman [fol. 80] had started shipping that I had a telephone conversation with him which I described yesterday. The records do indicate that the last shipment was January 30th, 1936. I would say the conversation was a month or so later than that. That would be approximately February or March, 1936. I would not say whether it was over the phone but I think it was. It was a telephone conversation because I called him at Chicago. I called him several different times.

I did not test the shipments covered by the exhibits bearing the dates January 27th and January 30th. The only way I know they contained alcohol was because I sold them to customers as being alcohol and I never had any complaints.

The telephone conversation I had with Mr. Braverman and which I have testified as being a month or two following the last shipment which appears to be January 30th, 1936, I wanted to know if we could get any more merchandise and he said he was through with the business. That was the full conversation. He said he was through. I could not say just when this was but it was a couple of months after he started shipping. Two or three months after he started shipping he quit. After I had that conversation I did not receive any shipments from any one in Chicago that I believed was Harry Braverman. I did

not receive any shipments from any person I believed might be Harry Braverman. I had no further business dealings with Harry Braverman following that date. I do not recall that I ever saw Harry Braverman following January, 1936. Between January, 1936 and November, 1939, I never dealt with anybody that represented themselves as an agent of Harry Braverman.

Cross examination.

By Mr. May:

I would say that I started in the alcohol business in 1934 in Toledo. I first started manufacturing. I had a still in Michigan but did business in Toledo. I have been connected with two stills in Michigan. I have no idea what their output was. I operated possible three or four [fol. 81] months in one and possibly two or three months in the other one. The first one was in Monroe County: William Kelly was with me on that still. Occasionally I worked in the still. I do not know how to operate a still. I just did the handy work. I did handle the alcohol and did go down to Toledo and sell some of it. It was not a very large still. I did not make any money. I lost money on that still. I borrowed the money to go into the still from two or three different people whose names I don't recall. All told, I think I borrowed in the neighborhood of one thousand dollars from three people. I remember who I borrowed the money from but I did not use it all to put into that still. The still cost in the neighborhood of two thousand dollars to put up. Kelly gave the other thousand dollars.

The second still was at Romulus. I operated it about two months or two months and a half. I got the money for that still from Mr. Dracka. I have no idea how much that still cost to put up. I would say it was around two thousand dollars. Mr. Kelly put some money in that still. I do not know how much Dracka put in. I had twenty-five per cent. That still operated about two and one-half months to three months. I did not make any money there either. I could not say how much alcohol I sold out of the Romulus still. I would say about one thousand gallons. We got in the neighborhood of two dollars a gallon. It was an illegal enterprise.

I have known Harry Klein, the defendant in this case, since 1935 though I do not know what month. I knew Louis Klein, a brother of Harry Klein. I sold him alcohol. I have talked on the phone to Harry Klein ten or fifteen different times. The establishment I have talked about on Grand River was a bowling alley. I do not know how many alleys it had. There was a restaurant in there. It was a big place. A lot of people came in there. I occasionally saw government agents in there. I don't believe I ever saw an agent by the name of Leeson. I did see a government agent by the name of White quite often, as well as Mr. King, who was a government agent. I talked to them. There were people from all walks of life in this [fol. 82] place. The government officers bowled here though I don't know whether they had a team that bowled there or not. I could not even begin to estimate the amount of alcohol I have sold since I have been in business. I have had customers I have sold come back and tell me it was water instead of alcohol.

I have used the name Chester Johnson. I am not the Rug Life Company. The Rug Life Company is a fictitious name. We did use it. I am not the Palmer Distributing Company. I never did use that name. I did use the name Mayfair Cleaners and had merchandise shipped to me under that label. It is a fictitious name. It was an alias used. I did not propose it. I received merchandise labeled from the Mayfair Cleaners which was a fictitious concern. In receiving it, I did use the name.

By Mr. May:

Q. And your partner was Mayfair in Chicago?

A. I didn't know what name they were going to use when they made shipments.

Q. You were a partner of Dracka?

A. Yes.

Q. Dracka was in Chicago using that name?

A. He was not, no, sir.

Q. Who used that name in Chicago?

A. Mr. Braverman.

Q. You never saw him put those labels on anything?

A. No, sir.

Q. So, as a matter of fact, you don't know who it was put those shipments up, do you?

A. No, sir, I do not.

I don't believe I ever used the name Clarence Wilson. I plead guilty to this indictment. My name is Henry Skampo. They call me Hank Skampo. They do not call me Chester Johnson nor Clarence Wilson. I had merchandise shipped to me under the label Golden Extracts, though I knew it was not Golden Extract.

While I was selling alcohol, if I could not get it from one source, I would go and approach someone else to make a contact to get it from another source. If the person I contacted was not in the alcohol business, I would have them refer me to someone who was in the alcohol business. [fol. 83] When I could not get alcohol in Chicago, I went to see a man named Frank to make a connection to get alcohol. He said he was not in the business but that he would try to help us out. When I could not get alcohol in Detroit, I did not go to Harry Klein and ask him to make a connection for me to buy alcohol in Detroit. Mr. Klein operated a book. I did go in there and gamble but very seldom. I very seldom won.

It was some time during the summer of 1935 that I went to this address on Grand River though I could not say what month it was. It was not Mr. Dracka who introduced me to Mr. Braverman. It was Mr. Klein. I don't think Dracka knew Braverman prior to my meeting him. I am positive he did not. I recognized Mr. Klein's voice when I talked to him on the phone. I could tell the difference between his voice and that of his brother Louis. I did go out and rent the Mack Storage plant. I don't recall what name I gave there. I did not use my right name because I knew I was going into an illegal business. I did not tell them what the shipments would contain. I talked to a young lady and a young man I guess. I just rented space. I think I paid around \$25.00 a month. It was never raided to my knowledge.

I went to Chicago and saw Mr. Stevens the first time in the Fall of 1936. During the year 1936 I did see Klein in Detroit at the Grand River address. I saw him several different times, Spring and Summer and the Fall. He was operating on Grand River in 1936. Mr. Klein had a place on Livernois in 1936. I saw him in his place on Livernois in 1936. He was operating on Grand River the same time he was on Livernois. He had a club on Livernois and the bookie on Grand River.

When I saw Stevens in Chicago I told him someone had sent me there.

I do not remember the phone number I called for the place on Grand River.

I did make a statement when I was arrested in this case. I do not know just when it was I was arrested.

Mr. May: At this time, if the Court please, I would like to call upon the district attorney to see the original statement given.

[fol. 84] The Court: I haven't any power to compel the district attorney to show you anything.

Mr. May: I think you have. I think I can show you the law on that.

The Court: You will have to show me the law.

Mr. May: I will show it to you.

My original statement was the same set of facts as I am now telling on the stand. No one promised me or offered me anything if I would testify. I have been out on bond. I have never been in jail or prison in my life. I have violated the law a number of times and they have not caught me.

The writing Mayfair Cleaners which appears on Exhibits 63, 64 and 65 is my writing. I knew it was not rug cleaning fluid.

Cross-examination.

By Mr. Cavanagh:

The first time I saw Mr. Stevens was in the Fall of 1936 at the warehouse in Chicago. At this time Mr. Dracka, Mr. Carroll who is sitting in the courtroom and myself were present. We were sent to the Empire Warehouse by Mr. Wainer, in the Fall of 1936. When we first arrived at the warehouse, Mr. Stevens was not in his office. He later came in. Mr. Carroll who was out to lunch, I think, came in later. We told Mr. Stevens that we had been sent there by Mr. John Doe or whatever name we were given to use. I do not recall what name it was though we did use a name. We said we would like to rent the same room. I imagine both Dracka and I did the talking. I do not know what part I took in the conversation. There were arrangements made relative to the price. We did not describe or tell Mr. Stevens what we wanted the space

for. The question of price was arranged with Mr. Stevens. I do not recall what the price was. That was before we had any arrangements for obtaining liquor in Chicago.

The shipments described in government's Exhibits 1, 3 and 5 were forwarded to be by Mr. Braverman. I do [fol. 85] not know from where they came in Chicago. I could not say it was from the Empire Warehouse. The funds that I sent for these were not forwarded to the Empire Warehouse. They were sent to whatever address was given to me to forward them to. I did not at any time have a conversation with Mr. Barrett of the Empire Warehouse. I do not know him. I did not ever see him around the warehouse premises. The only conversation I had with Mr. Carroll who is in the courtroom was about a couple of horses one day. I did see Mr. Stevens after the fall of 1936. I think it was once in the spring of 1937 and again in the spring of 1938. My second meeting was just a general how-do-you-do. The third time I saw him I had lunch with him and asked if there was a possible chance to rent the room and continue making shipments and he said there was no room available and that they were not renting out rooms for that purpose anymore. I could not say that Mr. Stevens knew at that time what the shipments consisted of. At no time did I tell Mr. Stevens the nature of this business. At no time did I take part in the operations in Chicago. The warehouse is a beautiful building. I do not know how many stories. I have no idea how many vaults or rooms it contains.

At the time I arrived at the warehouse in 1936, Mr. Stevens was dressed in his working clothes. He had been some place in the warehouse. We were standing in the office and he just possibly happened to come into the office. Our visit had not been arranged or planned.

I did not discuss this case with anybody or my testimony here since last evening. I did talk to Mr. Hopping after court adjourned yesterday and to Mr. Hinton.

The restaurant I met Mr. Stevens in was about two or three doors down from the warehouse. I met him there around noon time. I went to the warehouse first. Stevens was not there. Carroll told me he was at the restaurant. That is why I went to the restaurant. At no time did I have any conversation or make any arrangements with anyone but Mr. Stevens about the space in the warehouse. The payments for the rental was made by Mr. Dracka. I was

[fol. 86] present when the arrangements for payment was made. I do not recall now what those arrangements were. I think I was in the warehouse proper twice. There was considerable activity there and a lot of men around. On each occasion it was around noon time.

The visit I had with Mr. Stevens in the spring of 1938 was not occasioned by any appointment. I just happened in there. I was alone. It was occasionally, not on several occasions, that I went to Chicago and took back two or three cans in my car. I did not get any of these cans of alcohol from the Empire. I did receive alcohol from Chicago from a place other than the Empire Warehouse. That is the alcohol I received from Mr. Braverman and Mr. Wainer. I do not know anything about a place on Rockwell street in Chicago. I did not know where Mr. Braverman's headquarters were. I did not know the source of any shipments from Mr. Braverman. I do not know where they were prepared.

After court adjourned yesterday, I knew I had made a mistake and that my conversation with Mr. Stevens should be the spring of 1938 instead of the fall of 1937 and I so told Mr. Hopping. I had not exhausted my recollection yesterday as to the substance of that conversation. I never paid Mr. Stevens any money. I never told anyone in connection with the Empire Warehouse what this business was.

Recross-examination.

By Mr. Frederick:

The shipments wherein consignor was Rug Life and consignee was Mayfair Cleaners were not shipments made by Mr. Braverman. The only shipments I have attributed to Mr. Braverman are those wherein the consignee has been Palmer Distributing Company and the consignor Golden Extract Company. I do not know where those shipments originated, prepared, or who prepared them, or who placed them in the hands of the transportation company.

[fol. 87] By Mr. May:

I think Mr. Dracka introduced me to Harry Klein. I am positive Mr. King did not.

Redirect examination.**By Mr. Hopping:**

Referring to Government's Exhibit 1, we did receive a freight bill by mail along with the shipment received from Mr. Braverman. The freight bill was addressed to Mr. Dracka on 21st street, Wyandotte.

Mr. Frederick: I object to what the freight bills stated, or what appeared thereon, in the absence of its production in evidence.

The Court: It may stand.

Mr. Frederick: Exception.

The freight bill came to us by mail. We would take it down to the drayman and have the drayman arrange to pick up the shipment. The drayman did not always sign for the shipment in my presence though he did on some occasions. The drayman was the Wyandotte Cartage Company, Wyandotte. That signature appears on these freight bills. I was present when the shipments were delivered to us but not present when they got them at the Roadway. I saw the freight bills that came for these three shipments. The name of the consignor appearing on these shipments was Golden Extracts. The person using that name was Mr. Braverman. I did not talk with Mr. Braverman after the shipments had come through as to whether or not we had received them. We would just dispose of them, forward him the money, and when he got the money he would send another shipment. I did talk with him about that from time to time during the time we were receiving them from him. I would say we were doing business with Harry Braverman over a period of two or three months. It must have extended later than the month of January, 1936. Offhand, I could not fix the time when Mr. Braverman told me he was going to discontinue shipping alcohol from Chicago. I would say in the spring of 1936. Up to that time I had received possibly in the neighborhood of ten, twelve, or fifteen shipments, all labeled in the same manner. The consignor was the fictitious name of Golden Extract and the consignee, Palmer Distributing Company, Wyandotte, Michigan, care of Wyandotte Cartage Company. The only thing Mr. Braverman asked for was an address at Wyandotte. As to what names was going to be used was not dis-

cussed. After I started receiving the shipments I discussed them with Harry Braverman. I could not say just when the term Rug Life came into use. It was after I received word from Harry Braverman that he was discontinuing shipping. It was in the spring of 1936. I fix the time by reference to Exhibit 13.

Exhibit 13 is a photostat of a freight bill of one of the first shipments I received from Al Wainer. From that time on the name of Rug Life was used on the shipments of alcohol from Chicago. That was a fictitious name. The name of the consignee from that time on became Perfect Carpet Cleaners. That also was fictitious. So was Star Products Company at 3454 Mack avenue.

Recross-examination.

By Mr. Frederick:

I do not recall what the conversations were that I had during the time covered by Exhibits 1, 3 and 5. I do not recall how many conversations there were. I do not recall how many I had during January, 1936. I could not say whether they were by phone or in person. I did testify that I talked with Mr. Braverman during the time I was receiving these shipments. I imagine it was mostly about money. Yes, it was money. The first conversation would have been a day or two after I received the first shipment. That would be a day or two after January 15th. I called him up and asked him if he had received the money and he said he had. He also said he would forward another shipment tomorrow. I don't recall if there was any other conversations after that. I do not know if I had any further conversation with him between that date which was about January 17th and the date of the last shipment, January 30th. I do fix the [fol. 89] time when Mr. Braverman discontinued business as the spring of 1936. I do not know whether it was March, 1936 or not. I did say upon your cross examination that it was about two months after the last shipment which was indicated as being January 30th, 1936. It was the spring of 1936 but as to the month I could not say. I still say it was about two months after that last shipment. At the time of this conversation Mr. Braverman not only said that he was discontinuing shipment but that he was quitting the alcohol business. I never had any discussion with him

about the names which were used. The only thing he asked me for was an address which I gave him.

Exhibit 13 which I have identified as being the first shipment received by Mr. Wainer and in which the consignor is named Rug Life and the consignee Perfect Carpet Cleaners, is dated April 25th, 1936. I do not recall that I received any shipments from anyone in Chicago between January 30th, 1936 and April 25th, 1936. So far as I know, Mr. Braverman did quit the business in January or the first part of February, 1936.

DRACKA, CLARENCE, sworn, testified as follows:

Direct examination.

By Mr. Hopping:

My name is Clarence Dracka. I am a defendant in this case. I plead guilty to the charge in the indictment before trial. In 1935, I was living and working in Wyandotte, Michigan. At the end of 1935 I was in the alcohol business as partner in the Romulus still. I am acquainted with Henry Skampo who preceded me on the witness stand. I knew him in 1935. He was interested with me in the Romulus still. I did know that the still was being sold but I did not know to whom. I knew this from Mr. Skampo. I did not see anyone else at the still after that because after that I never went there.

A. After the seizure of the still, Mr. Skampo came to me and told me that—

Mr. Frederick: I object to any conversations had between he and Skampo in the absence of the defendants.

[fol. 90] The Court: Well, who was present?

A. Mr. Skampo and myself.

The Court: Objection sustained.

Mr. Hopping: Your Honor, it is offered on part of the conspiracy charged.

The Court: Fix the time, then.

By Mr. Hopping:

Q. When was it?

A. In the Fall of 1935.

Mr. Frederick: May I note the further objection. It is not part of the conspiracy charged. There is no mention in this conspiracy of the Romulus still, or the Romulus affair.

The Court: When does the indictment allege the conspiracy commenced?

Mr. Hopping: September, 1935, as to that part.

Mr. Frederick: The first of November, 1935, to the first of September, 1939.

The Court: When do you claim this was?

A. In the Fall.

The Court: 1935?

A. Yes.

By Mr. Hopping:

Q. What was the next thing—

The Court: There is a question pending in regard to a conversation.

(Thereupon, the reporter read: "Question: What was the next thing you did in connection with the alcohol business? Answer: After the seizure of the still, Mr. Skampo came to me and told me——".)

The Court: All right, he may answer.

Mr. Frederick: Exception.

Mr. Skampo told me there was a party interested in the still at Romulus and wanted to ship the merchandise to Detroit. The still in Romulus was seized probably around November, 1935.

Q. Did Henry Skampo tell you who was interested in the still there?

A. He did.

Q. Who did he say it was?

Mr. Frederick: I object to that, if the Court please, being hearsay.

The Court: He may answer.

[fol. 91] Mr. Frederick: Exception.

Henry Skampo told me Mr. Braverman was interested in the still there. After the still was seized there was a short lapse and we did not handle any alcohol for a while. Arrangements were made between Skampo and myself to get the alcohol from Chicago. We began receiving alcohol at

Wyandotte by motor freight. It came over the Roadway and Cushman companies' lines. I saw very little of the shipments, but it was in wood boxes, six cans to a box. It was delivered to 341 Superior Boulevard in the rear. That is run as a public garage. It is a six car garage in the rear of the building. I saw a few of the boxes of alcohol when they came in. To my knowledge they were labeled Palmer Distributing Company, co-signed from Golden Extract Company, Chicago. Seldom I saw any freight bills that came with those shipments, though I did see some. I had nothing to do with the freight bills. Mr. Skampo took care of them.

I can identify Exhibit 1, but I cannot say that I saw the shipment. I identify the exhibit by the words, Palmer Distributing, of Wyandotte, Michigan, from Golden Extract, Chicago. I know of the Wyandotte Cartage Company. At that time its address was around the 3500 block Biddle avenue. On the shipments I saw, the address I believe was just in care of the Wyandotte Cartage Company.

The bills of lading came to my address. Upon its arrival I would get hold of Mr. Skampo and from there on he took care of them. They came to my residence by special delivery mail. I did not keep any of these envelopes or bills of lading. I turned the bills of lading over to Mr. Skampo. I imagine the envelopes were destroyed. The outsides of the envelopes just had my name and address. That is all. I do not recall talking to anyone about those shipments of alcohol outside of Mr. Skampo.

One day in the early spring of 1936, I would say the date could be in January, Mr. Skampo notified me that Mr. Braverman was discontinuing the business and thereafter we could get no more alcohol. I imagine I saw three or four shipments that came up to that time. There was a short [fol. 92] lapse of time. We were out of alcohol. Mr. Skampo came to me one day and said there was another party from Chicago by the name of Wainer, who was looking to send some stuff over in the same manner as we had got it from Mr. Braverman and asked me if I would be willing to go on and finance the proposition. I said go ahead, I would. At that time I did not know anyone by the name of Wainer. I met him early in the Spring of 1936. I believe in Wyandotte. Mr. Skampo was present at the time.

Q. And what was said between you?

A. Well, just merely that I met Mr. Wainer and I believe Skampo and Wainer had talked over the arrangements, and

I had talked over the same arrangements with Skampo, and we agreed the stuff would start coming.

To my knowledge, we received alcohol from Wainer in Chicago for a short period of six or eight weeks. They came to the Wyandotte Cartage. They came in the same manner as the previous ones, only there may have been a slight change in the construction of the box. They were consigned Perfect Carpet Cleaners, co-signed from Rug Life, Inc.

During these several weeks, when the shipments were coming from Mr. Wainer, I did not talk to Mr. Wainer. I talked to no one but Mr. Skampo. I did not pay for these shipments. Mr. Skampo did. I believe the payments were all made by Western Union, though I cannot say. I do not recall that I talked to anyone else about the alcohol business during that time. After a period of several weeks had elapsed, Mr. Wainer I believe, came to Wyandotte. He talked to Skampo and myself. Said he was all through with the alcohol business; that he was not making any money; that he wanted to get out of it and, therefore, could send no more. The Mr. Wainer I mean is the defendant here on trial.

It was in the fall of 1935 that I met Mr. Braverman. I believe I met him at the bowling alley in the 9600 block on Grand River.

I see Mr. Braverman in the courtroom. At the time I met Mr. Braverman at the bowling alley, there was probably [fol. 93] two or three hundred people there. If I recall it, I met Mr. Braverman at a billiard table. I had not known him before that time. Mr. Skampo introduced me to him. I do not recall seeing Harry Klein there that night.

I have known Harry Klein eight years. I have seen Harry Klein in that place on Grand River before that, and I saw him there in 1936. I have had business dealings with Harry Klein from 1933 to 1935. I have seen Harry Klein since 1935. I saw him at his night club on Livernois avenue.

Q. What was the nature of the business you had with Harry Klein?

Mr. May: Just a minute, let's fix the time.

Mr. Hopping: He has fixed it from 1933 into 1935.

Mr. May: I object to any testimony before 1935 as prior to the date of this indictment.

The Court: Well, that is prior to the allegation in the indictment, isn't it?

Mr. Hopping: In the indictment as to Harry Klein, the date is fixed earlier as to one count, than it is as to the others.

The Court: All right, he may answer.

Mr. May: Exception.

The Court: Read the question.

(Thereupon the question was read by the reporter.)

A. The purchasing of alcohol.

I don't believe I ever sold any alcohol to Harry Klein though I have purchased it from him. I purchased alcohol from him from 1933 to the first part of 1935.

Q. You testified just before the noon recess, Mr. Dracka, that you purchased alcohol from Harry Klein, from 1933 into 1935, is that correct?

Mr. May: Just a minute. That's the question I will object to, if the Court please, as being outside the scope of the indictment.

The Court: He may answer.

Mr. May: Exception.

Mr. Frederick: I wish to note the same objection and exception as to defendant Braverman.

[fol. 94] Mr. Fischer: And the same objection and exception as to defendant Stevens and Barrett.

I received alcohol from Harry Klein at various places in Detroit. The last purchase I made from Harry Klein was arranged for at the bowling alley in the 9600 block on Grand River in the early spring of 1935. Mr. Klein's driver was there. I do not know his name but there was a driver there. I could not say whether Harry Klein was present or not. I did get some alcohol as a result of the deal. The alcohol was put into my car and the car brought back to me.

A. I either phoned or seen Mr. Klein in person, and I went to the bowling alley, and his driver met me, took my car, put the alcohol in it, and I paid him.

Mr. May: I ask that be stricken, if the Court please, on the ground it is calling for a conclusion. His driver—there is no proof of that.

The Court: Well, I will deny the motion for the present.

Mr. May: Exception.

By Mr. Hopping:

Q. What did you talk about when you talked with Harry Klein?

A. I ordered the alcohol from Mr. Klein.

Mr. Frederick: I wish to note an objection to this line of questioning, being in the absence of the defendant Braverman; further being without the time of the indictment we are standing on.

The Court: He says this is the spring of 1935.

Mr. Frederick: Exception.

I ordered the alcohol and asked the price. I don't remember the exact price. Klein told me he would give it to me. The driver was notified and the car was loaded. That is what Harry Klein told me.

The Harry Klein I am speaking of is the defendant here on trial. While my car was being loaded I stayed in the corridor of the bowling alley. That is the front entrance. There is quite a long entrance to the bowling alley. Fifty to sixty feet back to the alleys. That was not where I made the deal. The deal could have been made in the bowling alley. I made more than the one deal with Harry [fol. 95] Klein at that place, though at different parts of the premises. The bookmaking place is partitioned off from the bowling alley. It is in the rear in the left hand corner as you enter the building. It was separate from the bowling alley. You would have to walk through the bowling alley to get into the book making place. I frequently made deals in the room used as a book making place.

In 1935, I had known Harry Klein about two or three years. I knew where he lived. I have been at his home during this period of time. On one or two occasions I called on Mr. Klein. That was in the year 1934. In the year 1935, I visited his home or his premises on Cortland avenue, though I do not remember the number. It was about five blocks east of Livernois on Cortland.

In the spring of 1935, at the time I was at Harry Klein's home, I ordered some alcohol from Mr. Klein and he directed me to pick it up at his garage. I went to the garage and got some alcohol there. In the garage was just alcohol, maybe a bicycle, various things, garden tools, etc. There was not much more alcohol in the garage than what I took. Probably twenty-five gallon cans. I don't

remember any tax stamps on those. I never paid any tax to the Federal Government on any alcohol I handled or on any alcohol I ordered and received from Harry Klein, or from any of the others I have mentioned. I have never received alcohol from Harry Klein in any other than the two ways I have just described. That is, when the driver would fill up the car, or when I went to his garage. I purchased very little in 1935. Up to that time I bought from him every two weeks. I would get fifteen to twenty, five gallon cans at a time. I paid for it each time I bought it. I paid the money either to Mr. Klein or his driver.

The still at Romulus was seized in November, 1935. After that Mr. Skampo made arrangements for the shipping.

A. We received the alcohol, to my knowledge, from Mr. Braverman.

Mr. Frederick: I object to that, if the Court please, as being a conclusion and hearsay, at a conversation in the presence of the defendant.

[fol. 96] The Court: What statement did he make?

Mr. Frederick: He said, "We received the alcohol from Mr. Braverman."

The Court: He says to his knowledge.

Mr. Frederick: But he has heretofore testified, if the Court please, that that came to him from information from another person, Mr. Skampo. I submit that is hearsay.

The Court: I don't know, this appears to be a positive statement. You can cross examine him on it when you get to it.

The alcohol came from Mr. Braverman in the late part of December, into, I would say, February, 1936. There was a short lapse there. About that time I saw Mr. Wainer in Wyandotte, Michigan. Mr. Wainer, Mr. Skampo and myself were present. The conversation I referred to this morning was had. Mr. Wainer then notified us he was going out of the business and was not going to handle any more after about seven or eight weeks. During this time, Skampo and I received six or eight shipments of alcohol over one of the transportation companies I mentioned.

When I got word from Mr. Wainer that he was discontinuing I talked to him in person in Wyandotte, Michigan. Mr. Skampo was also present. I have testified to that conversation.

After that there was quite a lapse in the alcohol business. There was not hardly any alcohol in circulation. Mr. Wainer stopped shipping in July or the first part of August, 1936. We were out of alcohol until November, 1936, when Mr. Skampo and I drove to Chicago to make our own arrangements for shipping. During the summer or fall of 1936, I did not have any contact with Harry Klein regarding alcohol. I did receive some alcohol during that time through Mr. Skampo. I did talk to the driver and Mr. Skampo about where that alcohol came from. After Wainer stopped shipping in July, and until the fall of 1936 when I went to Chicago, there were occasions I received alcohol but it was not shipped. It came to me through a driver. I saw possibly fifteen or twenty drivers during that summer, in Detroit, Wyandotte, the whole down-river [fol. 97] district. I talked with Mr. Klein at 9666 Grand River about those drivers and the shipments I got. I talked to him about the one driver I knew who was the one he had. I believe his name was O'Brien. I am not certain of the name though.

Q. What did you say to Harry Klein about O'Brien, or the driver that you have in mind?

Mr. May: Just a minute. I will object to that as being a conclusion on his part. According to his answers, he says, the only one that he knew; there is no testimony of who told him. It is strictly hearsay testimony.

The Court: It may stand. He says the only one he had.

Mr. May: It is a conclusion on his part, if your Honor please. There is no testimony as to how many he had, if he had any.

The Court: I don't know, I can't get the Government to ask him the question, if that was the only driver he ever had, or if he knew it was the only one he ever had, or whether he had different drivers.

Mr. Frederick: I wish to note an objection to the conversation as being between this witness and the defendant Klein in the absence of the defendant Braverman.

The Court: Objection overruled.

Mr. Frederick: Exception.

The conversation I had with Harry Klein was merely that I wanted to get the stuff and he loaded my car. That

was the conversation with Harry Klein. My car was loaded. I received just one shipment from Harry Klein during the summer of 1936. I did not receive other shipments of alcohol during that summer. In November, 1936, I went to Chicago with Mr. Skampo. We went to a hotel on the West Central Park. We got in touch with Mr. Wainer. I believe he came to the hotel. That is the same Mr. Wainer I have previously identified as a defendant here. We asked Mr. Wainer if he could in any way get us a room in the warehouse for a means of shipping the alcohol ourselves. He told us that he was all through with the alcohol business. The tools were up there as far as he knew. We could have them if we would go there. Up to [fol. 98] that time I had not known the location of the room where the alcohol was shipped from. Mr. Wainer told us a name to use and to see Mr. Stevens when we went there. I do not remember the name he gave us to use. We did not have any other talk in regard to alcohol with Mr. Wainer. This was in the evening.

The next morning we went to the Empire Warehouse on Lake Park avenue in Chicago. I think it is 5041. We entered the front office. That is, Mr. Skampo and I stood there a few moments and finally Mr. Stevens, the defendant here on trial, appeared. Mr. Skampo first talked to Mr. Stevens and we told him who had sent us and asked if we could rent that room under the Rug Life. I do not recall the name that was mentioned to Mr. Stevens as being the person who had sent us, though it was just a common familiar name. It was the same name we had obtained from Al Wainer the evening before. At that time, Mr. Stevens said he could not give us a definite answer; we would have to wait a day or two. I do not recall whether I introduced myself to Fred Stevens by name or not. There was no other conversation that day. We waited for two days and called the warehouse from the hotel and inquired if he had found out anything. He said no. We then went again to the Empire and saw Mr. Stevens who told us that we could have the room; that there was a back rental the Rug Life people had left. I believe it was one hundred twenty dollars, or so. The account was never closed from the party that was there before. Therefore, the rent would have to be paid before the account could be opened. Mr. Stevens told this to Mr. Skampo and my-

self. We asked to see the room and did see it. I do not recall whether we saw the room on the first occasion or the second. The room was No. 549. When we first went up there, there were boxes, cartons, binding equipment, stencils in the room.

I identify those tools and boxes which are Government's Exhibits 67, 68 and 69, as being part of the equipment that was in Room 549.

Exhibit 68 is a group of stencils marked together. I identify part of them. That is three or four of them.

[fol. 99] Mr. Hopping: I will offer the three and indicate the one pulled aside as not being identified at the present time.

Mr. Frederick: Are you offering those now?

Mr. Hopping: Yes, sir.

Mr. Frederick: What is that, Exhibit 67? As to the defendant Braverman, I wish to object to the introduction of Exhibits 67 and 68 as being immaterial to this charge, insofar as the defendant is concerned; further, on the ground that it is remote in point of time from the charge as brought out—as produced from the testimony, and as being prejudicial to the defendant Braverman.

The Court: When was this?

Mr. Hopping: Will you state the time?

A. When I first seen this equipment?

Mr. Hopping: Yes.

A. In the fall of '36, about November.

The Court: Objection overruled.

Mr. Frederick: Exception.

Mr. May Same objections, and exception for the defendants Klein and Frank.

I identify Exhibit 69, either as being in the room when I first went there, or one like it.

Mr. Hopping: I offer 69.

The Court: They haven't been received yet. You offered 68, four stencils, with the exception of one. Separate them if you can.

(Thereupon the equipment previously marked Government's Exhibits 67 and 68, were admitted into evidence.)

Mr. Hopping: I would like to ask one question about the other one.

By Mr. Hopping:

Q. I believe you stated that the long one of the four stencils was not there when you first went there; do you recognize the long stencil?

A. I do not, no, sir.

Mr. Frederick: I wish to note the same objection as to Exhibit 69, as far as the defendant Braverman is concerned.

The Court: What is 69?

Mr. Frederick: That is the machine.
[fol. 100] (Mr. Hopping exhibits equipment to the court.)

The Court: That may be received with the exception of the fourth stencil in Exhibit 69.

Mr. Frederick: Exception.

Mr. May: Same objection as to the defendants Frank and Klein. I don't think there has been any connection shown between these two defendants with the Exhibits offered.

The Court: Objection overruled.

Mr. May: Exception.

I identify Exhibit 70 as being in the room, or one of similar material.

I identify Exhibit 71 as being in the room, or one like it.

I identify Exhibits 72 and 73 as a box similar to that size in construction and material which was in the room.

(Thereupon, the objects previously marked Government's Exhibits 70, 71, 72, and 73, were admitted into evidence.)

Mr. Frederick: I wish to note the same objection, with the additional reason that these exhibits described as Exhibits 70, 71 and 73, in particular, the witness has described "either these or something similar thereto," being incompetent identification for evidence in this case; the entire group of exhibits being prejudicial.

The Court: What do you say to that?

Mr. Hopping: Well, it may be that it would be better to withhold the offer for a little while, then I will re-offer them.

The Court: All right, withdraw the offer.

Mr. Hopping: Withdraw the offer.

The Court: Counsel have the right to object later on when they are offered.

After we went to room 549 in the Empire Warehouse and looked at it with Mr. Stevens, we made the business arrangements to pay up the back rent and start the rent from there. We paid a monthly rental plus so much to go on the back rent. The regular rent, I believe, was \$35.00. On the back rent the payments varied from \$10.00 to \$15.00 a month. I believe we paid up to about \$75.00 or \$80.00 [fol. 101] of the back rent. We talked to Mr. Stevens about paying the rent and paid it to Mr. Stevens and Mr. Carroll. We began using Room 549 from the fall of 1936. We did not use it the same day we made the arrangements but shortly after.

The next thing we did after looking at the room was make arrangements for getting alcohol. We knew a clerk on the north side of Chicago that ran a shooting gallery that introduced us to Mr. Frank. We went to see Mr. Guerman, I believe, who operated the shooting gallery. Mr. Frank came down to see us at the shooting gallery. We talked to him about getting alcohol. We asked if he could supply us with alcohol and he told us at the time he did not have any but would see if he could locate some. That time the conversation was between Mr. Skampo, Mr. Frank and myself. The Mr. Frank I speak of is the defendant here on trial. I believe Mr. Frank told us to phone him the next day and he would see if he could locate some alcohol. I believe it was the next day I saw Mr. Frank. This was in Chicago. He had made arrangements to get alcohol.

The second time we met Frank we had a conversation with him. He had told us that morning that he could get us alcohol and deliver it to us. We asked him the price and asked if he would deliver it on location. He said he would. I do not remember the price he quoted. We gave him the address of the Empire Warehouse on Lake Park avenue in Chicago where we wanted the stuff delivered. That was where we had rented the room. I believe it was the day following our conversation with Mr. Frank that he brought the first alcohol to the warehouse. He brought it by car. At the beginning Mr. Frank did not go into the warehouse. I met him outside and drove the car in myself and unloaded it. The warehouse had quite a long corridor. There was quite a large space with room enough to turn a small car around in the driveway where trucks are loaded at the outside dock. I would take the car, drive it in, and pick up the

alcohol and at a large freight elevator threw the alcohol off. [fol. 102] Exhibit 58 is a picture of the warehouse. I identify on the picture the door through which I drove in with the load of alcohol. That is the big door on the main street on the left hand side of the building. As I drive through that door there is a corridor that leads to the court. When I got back there I stopped the car and took the alcohol out of it, set it on the elevator and took it upstairs. I was alone when I drove the car in. After the car was unloaded I drove it out and turned it over to Mr. Frank. I left the car set there until I took the alcohol upstairs on the freight elevator. Mr. Stevens ran the freight elevator. He was there the first time I drove the alcohol in. I took it up to the 5th floor and put it in Room 549. I had a key to the room. Mr. Stevens usually helped me set it off the elevator at the 5th floor. It was allowed to sit in the room until ready to be shipped.

On the first occasion I got but a small amount from Mr. Frank. I believe about 24 or 25 five gallon cans. I set them in Room 549. They were put in cartons which were placed in those boxes, nailed up, strapped, stenciled and shipped. On the first occasion, after I had taken the alcohol upstairs, I returned to the car and took it out to Morris Frank. There was a cafeteria right directly across the street where Mr. Frank was waiting for me. I took the car to him. I usually paid for the alcohol there. I paid the money to Mr. Frank. I then would go back and ship the alcohol. It was about fifteen or twenty times that Morris Frank brought alcohol to me at the Empire Warehouse. It was handled in different ways when Mr. Frank was getting out of the business. After we got better acquainted, Mr. Frank brought the car and the alcohol into the warehouse himself. He usually helped me set the stuff on the elevator. I believe Mr. Stevens was warehouse man at the time. He was there daily. He assisted on nearly all the occasions with running the elevator. I do not recall whether Mr. Frank was ever up to Room 549 with me or not. Other than Mr. Stevens and Mr. Skampo, I do not believe there was anyone else who went into Room 549 with me during that period of time.

I continued to pay Morris Frank after each shipment he delivered. After the alcohol had been taken into Room 549, [fol. 103] the cans had to be tested to be sure there were no leaks. They were then put into cardboard cartons and

sealed up. There were six cartons together. Each five gallon can was placed in one of the boxes which were then nailed, strapped, bound and stenciled and shipped.

When we first went to the warehouse, we told Mr. Stevens that we wanted the room and a key for it so that nobody could get in. I believe he did mention to us something about that he did not want a lot of people coming into the warehouse, though I do not recall for sure. I believe he said that there was not supposed to be a lot of men coming to and from the warehouse. This was at the time we rented the room.

The boxes in which the alcohol was packed were manufactured by the Republic Box Company in Chicago. I did not obtain boxes from any other concern. There was a Republic box carton hanging in the room under the trade name of Merchants Chemical. I obtained certain boxes in the name of the Merchants Chemical Company. Mr. Pacente, the drayman, received the money from me and would go over, pick up the boxes and return them to the warehouse. I needed a drayman, went out and hired Mr. Pacente as the first one I met. The boxes were brought up in the same way the alcohol was. I met Mr. Pacente at the Empire dock, inside the room on the first floor of the warehouse. Mr. Stevens was there on those occasions.

Exhibits 74 through 88 are receipts on orders for boxes. When we first talked with Mr. Stevens, we told him that the boxes had to come in and we had to have the use of the shipping entrance to ship the stuff out. Mr. Stevens helped unload them. He helped me put them on the elevator and take them upstairs.

The cardboard cartons that we used in packing the alcohol shipments were obtained, I believe, from the Acorn Box Company in Chicago. I do not remember the name under which they were ordered. I believe I went in person to the Acorn Box Company. These boxes were picked up at the same time as the wooden boxes. Usually it was on the direct way for Mr. Pacente to make both stops and pick them up. They were ordered in a different name than the boxes. It was not in my name.

[fol. 104] The Court: Any objection to 74 to 88?

Mr. Fischer: Yes, there is, your Honor; the defendants Stevens and Barrett object to the introduction of those bills, not being connected up with any shipments as going

directly, as testified, into the warehouse, as connected with them, there being no writing on there, upon the documents themselves, by which to identify them, and no other manner has been indicated.

Mr. Frederick: As to the defendant Braverman, we wish to note the same objection.

The Court: Objection is overruled, and they may be received.

Mr. Fischer: Exception.

Mr. Frederick: Exception.

(Thereupon, the documents previously marked Government's Exhibits 74 to 88, inclusive, were admitted in evidence.)

The Court: Show the number of boxes that were purchased and brought there.

Mr. May: Same objection and exception for those two defendants that I represent, and I might say that I would like to have the District Attorney stipulate on the record that the originals will be produced; these are photostats.

Mr. Hopping: We expect to produce the originals, your Honor.

The Court: All right.

I identify Exhibits 89 through 96 as being the bills for cardboard boxes I ordered and used at the Lake Park warehouse. It was only on the first order that I went in person to the Acorn Company and placed the order. I do not know with whom I talked. I gave specifications for the size of the cartons.

Mr. Frederick: I object to that or any conversation.

Mr. Hopping: I didn't ask him for any conversation.

Mr. Frederick: If he gave specifications, he would have to give it in some form.

The Court: It may stand.

Mr. Frederick: Exception.

They were square and just the right size for a five gallon can. There are different types of five gallon cans [fol. 105] that were used for alcohol. The one used in this instance was what was known as the Chicago five gallon short. That means that they were just slightly shorter than a regular five gallon can. The cartons were made just to fit that size can. After the cartons and boxes were in

Room 549, I had to test the cans for leaks. The cartons were then assembled, they having been received knocked down in bundles, 25 to a bundle. One end of them was sealed, the cans placed in it and the cartons sealed up. Then they were placed in those boxes, strapped, nailed and stenciled. They were strapped with that Signor strapping tool. Exhibit 70 is one of the Signor strapping tools.

Mr. Frederick: I ask the last testimony as far as the defendant Brayerman is concerned, be stricken and the jury instructed to disregard it as being prejudicial.

The Court: Objection overruled.

Mr. Frederick: Exception.

The Court: Motion denied.

Mr. May: I will object to it, if your Honor please, on behalf of defendants Klein and Frank, that an exhibit has been attempted to be identified here without it first having been offered; that is one of the things that he didn't—or that wasn't accepted in evidence and he is using it to try to get around what he otherwise could do.

The Court: Well, it may go to the order of the proof; that won't do any harm. I am assuming that he has offered it; I don't know whether he has or not.

Mr. Hopping: Withdrew the offer and now it is being further offered.

The Court: What is the number?

Mr. Hopping: Exhibit 70.

Mr. May: Exception.

(Thereupon the object previously marked Government's Exhibit 70 was admitted in evidence as indicated.)

The boxes had to be raised slightly off the floor to get the strapping around them. The strap was then cut off at the proper length and drawn with the tool. That is Exhibit 69. That draws the strapping tight and holds it while it is clamped on with the other tools; that is, Exhibit [fol. 106] 67. This is used to clamp the clips in the box there; the Signor clips that are in the cardboard box. Exhibit 72 is the box containing those clamps. After they are strapped and sealed they were stenciled with Exhibit 68. The stenciled marking on the box read the same as on the stencil marked Exhibit 68; that is, "From Rug Life, Incorporated, Chicago." They also bore the mark "Will

call" and there is, I believe, "This side up." Also was the wording, "Handle with care, use no hooks; Packer No. 15."

Exhibit 71 is the brush and ink container used for stenciling. As I recall, Mr. Stevens helped me strap and stencil them. I do not recall just when that was, though it might have occurred anytime from the fall of 1936 until the spring of 1937.

Exhibit 66 was then read to the jury.

Mr. Hopping: Printing: "Handle with care; use no hooks, Packer No. 15" on one end; "From Rug Life Company, Incorporated, Chicago" in another place. "This end up" "Top"; and another place, "Star Products Company; care Mack Storage Company, 3454 Mack avenue, Detroit, Michigan."

I handled alcohol in Room 549 in this manner from November 1936 to May, 1937. Mr. Stevens helped me four to six times. I saw Mr. Stevens in the office every day that I was there. I also had dinner with him in the restaurant. There was not anyone else with us. We usually went for lunch together. I never talked with Mr. Stevens about the business I was in.

In May, 1937, we quit. I cancelled the rent, told Mr. Carroll and Mr. Stevens I was all through. I closed the account and believe I talked with Mr. Stevens. We left the tools and equipment in the room and I came back to Detroit. During the time we were in the warehouse, that is, up to May, 1937, I obtained alcohol from Al Johnson. In the spring of 1937, Morris Frank told me he was going into another business; that he was unable to supply me with very much more alcohol and in the meantime, I had seen Al Johnson. He told me he wanted to supply me. This was in the spring of 1937.

[fol. 107] Mr. Frederick: I further object to the conversation with Johnson in the absence of the defendant Braverman on the ground of prejudicial.

The Court: Is Johnson one of the defendants?

Mr. Frederick: He is a co-defendant but not yet apprehended.

Mr. Hopping: That is correct.

The Court: Is this Ellis Johnson?

A. That is correct, yes, sir.

The Court: He may answer—the answer may stand.
Mr. Frederick: Exception.

The alcohol I got from Al Johnson came in a large Dodge truck.

I identify Government's Exhibits 98 and 99 as pictures of the truck I refer to. The truck was driven into the warehouse in the same manner as the car, set on the elevator and then taken upstairs. I only knew the driver of the truck by the name of Steve. I took the alcohol into Room 549. Mr. Stevens was in the warehouse on these occasions and I believe ran the elevator. The alcohol came in five gallon cans. There were no tax stamps on them. I later found out that this alcohol came from the Racine Distillery. I learned this after the seizure of the still, which was in the spring of 1937. I never went to the place. There was another driver on the truck besides Steve but he never came to the warehouse. The truck was a large concealed truck and the cans were just piled in it. They were not in any other containers. When the truck got inside the warehouse, the cans were placed on the elevator and taken up to Room 549.

It was in April, 1937 that I received alcohol in this Dodge truck. I paid Al Johnson for it. The man I met in connection with Al Johnson, other than the driver, Steve and the one I saw in the truck with him was Stanley Slesur. I have not seen him in the courtroom. I would receive about one hundred, five gallon cans at a time in the truck. I packaged and shipped it in the same way. During the time I received the alcohol from Johnson, that is, in April, 1937, I was shipping it to the Star Products, Mack Avenue [fol. 108] Storage, Detroit. Several shipments went to Toledo, Ohio, by way of Liberty Highway Motor Freight, Mayfair Cleaners. I did make out some bills of lading or freight bills for the shipments.

I identify Government's Exhibits 63, 64 and 65 by the trade name, Rug Life, Inc. They do not appear to be made out in my handwriting. I usually had Mr. Stevens make out the freight bills or bills of lading, though I did make some. I cannot recall which shipments Fred Stevens prepared the waybills for. I would say he made them out 80% of the time.

After May of 1937, I discontinued the shipping and came

back to Detroit. At that time I did not have any contact with the wholesale alcohol business. I have never had any connection with it since. Upon my return to Detroit, I started building up a still in Livingston County, Michigan. It was seized when it was about half completed. I was arrested and convicted in connection with that and served a sentence.

The first part of January, 1938, I turned the warehouse room over to Al Johnson. He came to me in Detroit while I was working for the Caldwell Motor Freight. He knew of the room and the tools I had there when he was sending me alcohol and wanted to know if there was some way he could obtain that room. I told him I was not going to have anything more to do with it and that he could have it. There was no one else present when I had the conversation with Al Johnson. I told him that the only way he could obtain it was to drive me to Chicago and back, which he did. We went to see Fred Stevens who I introduced Mr. Johnson to and told him that I would like to turn the room and tools over to him, that is, to Al Johnson. I do not recall anything else being said between Mr. Johnson, Stevens and myself. Johnson then drove me back to Detroit. Stevens agreed to let Mr. Johnson use the room. At that time I was using the name of Rug Life, Incorporated. I was personally known to Fred Stevens as Don Nelson.

I identify Government's Exhibit 100 as being an agreement for Room 549. I don't know whether it is my signature [fol. 109] nature or not. I do not recall seeing it made out. I believe Mr. King showed me this Exhibit in regards to my handwriting. I identify the exhibit by the address and the trade name of Rug Life. It seems to me there was some kind of a contract or agreement made out at the time Al Johnson and I went to see Fred Stevens. I cannot recall whether I signed it or not. I did not have any conversation with Mr. Stevens regarding such an agreement and I do not recall whether Al Johnson did.

Mr. Frederick: These exhibits, which have been offered, there have to be objections noted.

The Court: What exhibits are those?

Mr. Frederick: Exhibits 89 through 97.

The Court: 96.

Mr. Frederick: Through 97 inclusive.

The Court: 97 was not one of the bills, he said. Exclusive of 97.

Mr. Frederick: I wish to note an objection to the introduction of them upon the grounds they are prejudicial, upon the grounds this witness has not completely identified them, and that they are immaterial to the charge here contained.

The Court: Objection overruled.

Mr. Frederick: Exception.

Mr. Fischer: If the court please, defendants Stevens and Barrett also object to the introduction of Exhibits 89 to 96, inclusive, for the reasons as stated by counsel, and for the further reason, it is apparent from the state of the exhibits they were delivered to some other company who is not involved in this conspiracy, alleged conspiracy.

The Court: What is there about that?

Mr. Hopping: The witness has testified that these were the orders which he received, and that they used some other name in making the orders. I will ask him about the names that appear on here now.

The Court: Those were orders given by him for cartons.

Mr. Hopping: Yes.

The Court: For 5-gallon cans.

Mr. Frederick: These are for the cartons.

[fol. 110] The Court: I say, for cartons for 5-gallon cans.

Mr. Hopping: To clear up this one point, I will ask him about the name of the person appearing as the consignee of these cartons.

The name used generally in ordering cartons was the Farquhar Company. Merchants Chemical was also a name used in ordering the supplies for packing alcohol. To my knowledge, outside of myself, there was no Farquhar Manufacturing Company. I do not know how I came to use the name. That was the name in which I ordered and received the cartons.

The Court: They may be received.

(Thercupon, documents previously marked Government's Exhibits 89 to 96, inclusive were admitted into evidence.)

Mr. May: The same objection, and I take the same exception for defendants Klein and Frank.

The Court: The same ruling.

Mr. Fischer: Exception.

By Mr. Hopping:

Q. Will you look at Exhibit 99, which you identified, and see if that is a picture of the truck which brought the alcohol to the warehouse?

A. That is a picture of the truck.

Q. And is Exhibit 98 a picture of the same truck?

A. It is a front view of the truck, yes, sir.

Mr. Frederick: I didn't hear the witness.

The Court: Front view.

A. It is a front view of the truck.

The Court: They may be received.

(Thereupon, the documents previously marked Government's Exhibits 98 and 99 were admitted into evidence.)

The truck was driven into the warehouse, opened up and the cans set out on the first floor. They were placed on the freight elevator, one can at a time. Mr. Stevens was present while we were taking it upstairs. Morris Frank delivered the alcohol—usually in a Ford coupe. He delivered around thirty—five gallon cans at a time. They were under the lid of the rear deck compartment. The Ford coupe was driven into the warehouse, opened up, one can at a time set [fol. 111] out on the dock, then moved one can at a time from the dock to the elevator. Fred Stevens was not present during all this time but was present when we took the elevator up. They were removed from the elevator a can at a time. I tested the cans of alcohol for leakage after they were in the room. There was very little leakage and very little odor. There could have been an odor at times to one familiar with alcohol odors. They were tested for leakage by turning the cans up side down. This was not done immediately after receipt of a shipment. They were just plain filled five gallon tin cans. Most leakers were found in the cap, that is, the seal in the cap. I would have to take the cap off and put a new one on. I do not recall that Fred Stevens ever helped do that.

After I turned the Rug Life business over to Al Johnson, I came back to Detroit and was sentenced. I did not have anything to do with this business after that.

I recognize Charles Pacente in the courtroom as the one I hired to haul the empty boxes from the Republic Box

to the warehouse; the cartons from the Acorn Box Company, and crates and boxes from the Empire Warehouse dock to Roadway Transit and Liberty. He did not come into Room 549 to take the shipments. I would take the boxes down myself. I would set them outside the room and Fred would help me wheel them to the elevator. The waybills or bills of lading were made out a few minutes before the shipments were to go out. I would say Fred Stevens made those waybills out eighty per cent of the time. To my knowledge, there were no arrangements made with the Roadway Transit to get the shipments aboard except that we met the late afternoon truck that came to Detroit. The truck loaded at five in the evening and they had to be there before five. We made about three shipments a week. Usually, I sent five or six cases at a time. The freight charges were paid to the Roadway Transit by Mr. Skampo. They were sent C.O.D. I paid the haulage charges in Chicago to Mr. Pacente. Mr. Pacente took the bills of lading and waybills from the warehouse to the Roadway Transit. I do not remember the telephone number [fol. 112] of the Empire Warehouse or the exchange I called. I never used the phone in the warehouse to order supplies or to do this business. I used the phone in the drug store across the street. There was a telephone in the warehouse.

I may have seen Harry Klein once or twice after the spring of 1935. I would say at the bowling alley on Grand River. I saw his brother there once or twice. He is dead now. His name is Louis Klein. I believe I also met Mr. Skampo in there one day. I did not do any business in Harry Klein's place with his brother Louis. I did not do any alcohol business with anyone else in Harry Klein's place other than Harry Klein, Mr. Skampo and those I have mentioned.

Cross-examination.

By Mr. Frederick:

I was discharged from prison July 8, 1939. I have never been in prison or convicted on any other occasion. I was in custody seventeen months and some days. I was sentenced on January 28, 1938. Prior to that, my home was in Wyandotte, Michigan, where I lived for fourteen years. I am a married man. I have been in the alcohol business

since the spring of 1935. During that time, I have been engaged in the operation of stills. I was so engaged from 1935 through 1937. Since 1937, I have been in the wholesale distribution of alcohol. This is the only occasion that I have ever been convicted. I was arrested but not convicted in 1936. In 1937, I was arrested for a still in Livingston County. I first met Harry Braverman in the fall of 1935. I would put the month in late October or November first. This was in the bowling alley in the 9600 block Grand River. I met him through Mr. Skampo. I had very little conversation with him at the time. It was just a meeting. Mr. Skampo merely took me in to get acquainted with him. I merely acknowledged the acquaintance. There was no further discussion. I did not discuss anything about the alcohol business with him. I have never directly discussed anything about the alcohol business with Mr. Braverman. [fol. 113] My transactions were all done through Mr. Skampo. If there was any connection in which Mr. Braverman was associated, Mr. Skampo took care of it. I never talked with Mr. Braverman about the alcohol business. I did not hear the telephone conversation Mr. Skampo had with Mr. Braverman. One night I was standing outside the phone booth while Mr. Skampo talked to Mr. Braverman. I do not know that he actually talked to Mr. Braverman outside of the fact Mr. Skampo said he did. This phone conversation was in the winter of 1935.

I testified on direct examination that Mr. Skampo told me Mr. Braverman was quitting the business in the spring of 1936. I put the time at February 1936. Following February of 1936, Mr. Skampo and I never spoke about Mr. Braverman in regards to the alcohol business. We may have spoken about him in regards to friendship. There was nothing, however, regarding any transactions of business. Following February, 1936, Mr. Skampo did not discuss or mention Braverman in connection with anything in the line of the alcohol business.

I recognize Exhibits 1, 3 and 5 as being the shipments of alcohol we received from Chicago, by the amount of the cases and the trade name and the address given. I do not recall that I ever saw those receipts before. I might have seen some similar to those on other shipments but I cannot say I ever saw those same exhibits. I do not know when, where or by whom they were prepared. As to the articles described on the exhibits, that is, Exhibit 1, dated

January 30th, 1936, fifteen cases of carmel extract; Exhibit 3, fifteen cases of carmel extract, dated January 15th, 1936, and Exhibit 5, eight cases of carmel extract, dated January 27th, 1936, I recall that we received fifteen cases of alcohol about that date. I also recall that on or about those other dates, we received cases of alcohol. I know the alcohol we received came from Chicago and that is all. I do not know where in Chicago it came from nor who prepared it for shipment. I gave the money for its payment to Mr. Skampo. All I know about that was what Mr. Skampo told me.

Between January 30th, 1936 and approximately March or April, there was a lapse between the shipments that [fol. 114] we were getting. The exact month and time I don't recall. I would say around April, 1936. The next I recall were shipments that originated from Mr. Wainer. That would be about April or May, 1936.

Referring to Exhibits 89 to 97, which are the bills for the cartons, I saw the second receipt from that company. These are, I believe, the originals. Usually Mr. Pacente brought me back the receipt paid, from the Acorn people. I never saw these exhibits before today. I do not know where they have been kept. The ones I saw were all destroyed as we received the merchandise. I destroyed them.

As to the separate orders, I do not recall the dates or amounts but I would say that during the month I would order around 200. That is, I would order around 200 every time I placed an order. This was probably every two or three weeks. Every time I would get boxes I would try to pick up cartons at the same time to save extra dray charges. I believe I have ordered less than 200 at a time. I do not recall the least I ever ordered though maybe 100 or 150. I do not recall how many times I did order 100 or 150. I could not say for sure I ever did order 150. Under date of January 25, 1937, there is shown an order for 150 and it is possible that I ordered them that day. I have no particular recollection as to whether I ordered 200 or 150 that month. All I know is I ordered 200 in the month of January. I would not be positive that I ordered 200 in the month of January, 1937.

Exhibits 74 through 88, which are photostats of receipts of the Republic Box Company, are recalled to me because they relate to 25 boxes, six five-gallon boxes which would be the capacity of the box. I remember ordering boxes.

I do recognize writing on three of the exhibits. I recognize Pacente's signature on Exhibits 87, 86 and 85. My signature appears on Exhibit 84. I also recognize Pacente's signature on Exhibit 76. I do not identify any writing on the others. The ones on which my signature appears, I recollect that my signature was placed on it at the time the boxes were ordered. I have an independent recollection [fol. 115] of the delivery of the boxes to the warehouse. I recollect that all boxes I ordered were delivered. As to Exhibit 76, on which I recognize Charles Pacente's signature, and which is dated April 8, 1937, I recall covers the time we were still shipping alcohol but I don't recollect that certain date.

In identifying Exhibits 70, 71 and 68 which I said were the articles, or similar articles to those I found in the room, I cannot definitely identify because the only way to identify a tool is by the number on it and I did not take the number of the tools. As to those articles, I can only say that there were some that look like those in the room. The same is true of the boxes which is Exhibit 76 and the cardboard box which is Exhibit 72.

Cross examination.

By Mr. Fischer:

I am married and do not have any children. I am 31 years old and have a eighth grade education. I am a die maker by trade and am at the present time engaged in that occupation by the Ford Motor Company. I have been engaged in a mechanical capacity before. During 1927 to 1929, I had the whole United States under my service for the Allis Chalmers people. I traveled out of the factory. I worked for A. W. Couchie Construction Company, at Pontiac, Michigan, as master mechanic on Pontiacs. That is another automobile company. After that I went in business for myself building boats at Wyandotte, Michigan. I was engaged in building and repairing boats about three and one-half to four years. I worked on mostly speed boats and cruisers. They were owned by everybody from doctors to bootleggers. I repaired them. The mere fact it was a bootlegger did not cause me to refuse the job. It could be that from that contact I got in the alcohol business. I never transported any alcohol across the river in boats.

I have known Mr. Skampo since the spring of 1935 and have been friendly with him ever since. We did have a slight difficulty. It was just an occasion where we split [fol. 116] up and went out of business together. The reason for this was that we were not making any money.

I first met Mr. Stevens in the fall of 1936. I mean November. I met him with Mr. Skampo in front of the Empire Warehouse, the Lake Park branch.

Looking at Exhibit 58, a picture of the warehouse, the office is right behind these front doors in the center of the building. I would say it is half as large as this courtroom and about the same width. The office is in the front of the building. In the rear of the office is a steel gate which is closed at night, where the vaults are. There is stairs and a passenger elevator as you enter through this gate and there is stairs that goes back into the warehouse part, the docks. This gate is operated by hand. That door (indicating on the picture) is for the freight trucks. Back of that is a corridor, thirty-five or forty feet long that leads back to the dock. It would be about ten feet wide. It is a straight corridor and gradually expands. When it gets back to the docks there is room to back a truck up to the dock. I have seen as many as four trucks in there. There is two loading platforms there. The large freight elevator is in the right rear of the corridor as you walk in and there is another dock on the left rear. I would say the freight elevator is eight feet wide and probably fifteen, sixteen feet long. I have ridden the elevator frequently. I have been as high as the fifth floor. Every one that works in the warehouse operate the elevator. I have seen as many as six men working around there. I have seen other men such as truck drivers working at the dock loading and unloading. Many truck drivers came in and unloaded. The only difference between the other drivers and the Empire man is that they, the Empire man usually wore a working uniform or over-all which had the name Empire on them. Mr. Stevens did not wear one of these. He usually wore ordinary street clothes. To my knowledge, Mr. Stevens was warehouse man. I believe he had charge of all of the furniture being crated, being brought down, and people moving here and there. In other words, he was in charge of the warehouse and did everything that was supposed to be done [fol. 117] around there. Mr. Stevens operated the elevator

for everyone. All the Empire men operated the elevator. Other Empire men unloaded merchandise on to the dock and took it into the elevator and up to the respective floors. At different times, I believe I was on different floors than the fifth floor. I believe the fifth floor covered the whole area of the building outside the elevator shaft and the stairs. I would say the building is 300 feet long. There were two elevators. One was a passenger elevator and one used for freight. The passenger elevator was in front of the building, back of the steel gate. The elevator we have been speaking about that took up to the fifth floor was in the center/rear. Upon arrival at the fifth floor, we carried the merchandise off. There were steel doors at the ends of the elevator. We carried the merchandise approximately fifteen feet from the elevator to room 549. There were about one hundred rooms on the fifth floor, I imagine. They were all fire proof tile. Each room had a black steel door with a number on it and a heavy latch. From the elevator down to the front of the building there was one corridor on each side. There were rooms in the middle and on each side of the building. There was about one thousand square feet in room 549. I have been on the fifth floor when there were others moving merchandise in and out. All of the rooms were the same design outside of some being larger and some smaller. Room 549 was no more accessible than the other rooms. The lock on the door was just a regular key padlock. Probably a twenty-five cent padlock. I did not notice if there were some that had private locks. All the locks looked nearly the same to me. I don't know if Mr. Stevens had a master key or whether he had all the keys downstairs. I kept the key in my own possession. As I recall, I believe I did, myself. I do not know if there was another key downstairs or not though there could have been. I never told Mr. Stevens he could not go in the room. I saw Mr. Stevens crate furniture, move furniture from the docks, or as it was brought in bring it up to the rooms. He shipped all the furniture. He was in charge of the shipping out of the furniture. I believe he would be called [fol. 118] an expert packer. I have actually seen him crate various types of furniture, crate all types of furniture. I have seen him use barrels, crates of all description and all size boxes. To my knowledge, he made out most all of the bills of lading or freight shipping tickets. I do not recall

that Mr. Pacente ever made out any of our waybills. He could have but I do not so recall. To the best of my recollection, Fred Stevens and I were the only ones who made out any shipping tickets or waybills. I never signed for any of the merchandise that came in addressed to Rug Life. The drayman, Mr. Pacente signed for them.

At the time I made arrangements for renting the warehouse room, it was the agreement that it was not to be used for dead storage and that I was to receive assistance in handling the merchandise, and was entitled to the elevators, and that some one would help put the merchandise on them. I believe the price we paid was the standard price in Chicago for live storage, elevator dock and all. At the time of making arrangements I did not know just how much of the charge was for dead storage and how much was the handling charge. I am sure it was \$35.00 a month we paid.

The amount paid for rent was the only money paid the Empire Warehouse outside of the back rent on the account which I paid. The truck pictured in Exhibits 98 and 99 was no different from other trucks I saw at the dock. There was nothing to distinguish between the trucks of companies who delivered to us from other trucks I saw at the docks. So far as my business at the warehouse, it was just as a customer. I was not familiar with other people's business and transactions in the warehouse, except what I saw.

I have seen Fred Stevens pack merchandise, operate both elevators, and as far as the freight elevator is concerned, operate that for other customers or clients of the warehouse. My understanding was that no one but an Empire man could operate the freight elevators. I never operated it and to my knowledge no other customer ever did. I have seen Stevens assist others in transporting merchandise from the elevator to their respective rooms in [fol. 119] the warehouse. I have also seen him unload other merchandise from trucks onto the dock for others. I also have seen Fred Stevens make out waybills or shipping tickets for other customers. Other than what I have enumerated, Fred Stevens may have taken care of such things as small errands, like unloading the empty boxes. He took care of that for me. He unloaded boxes off the elevator on to the dock. It was just a matter of handling freight. I saw him perform like service for other people. To my knowledge, I was known to Fred Stevens only as Don Nelson during this entire time. To my knowledge, I was never

known to Mr. Stevens as Charles Dracka, or any other name.

That box is a different construction. Our boxes were the same size and shape, but of different construction. The Republic Box Company did not ask if the boxes were going to be used for shipping alcohol and I did not tell them. The signor clamps were in the warehouse. There was a box containing five thousand and we never needed any more. I bought some binding wire from a steel company whose name I do not recall. It was just a small company that handled various gauges of banding iron. I phoned and placed an order. I do not know what the size was but maybe it was 150 or 200 pound roll. Mr. Pacente picked it up for me. When I purchased this stripping, I did not tell the company I was going to use it for the purpose of shipping alcohol and they never asked me. Neither the box company nor this company asked what I was going to use the material for. I did not buy any of the stencils which have been introduced in evidence. Most of them were there and those that were not I made myself. The men I hired to haul these boxes did not ask what was in them and I did not tell them. I never spoke to Mr. Barrett before this trial though I have since. I do not now recall the name of the person I told Mr. Stevens had sent me to the warehouse. Mr. Skampo was the first man that approached Mr. Stevens, I believe.

I testified yesterday that Mr. Skampo telephoned the warehouse. I believe I talked by phone to Mr. Skampo at the warehouse.

[fol. 120] I did sign a statement for the government and have a copy of it, but not with me.

Q. May I have the government copy which was delivered to us?

A. As far as I am concerned you could have, yes, sir.

Mr. Fischer: May I have that, Mr. Hopping?

Mr. Hopping: No, your Honor. We do not consider that as being competent evidence unless all the statements made by all parties in the case are introduced in evidence at this time, even though they may or may not be on trial.

The Court: I cannot tell you to produce it. Someone was going to show me some authority but I have not seen it yet. If later on I am convinced that the government can be compelled to produce it, I will so rule.

Mr. Fischer: Mr. Hopping, you have some papers of the Empire Warehouse which were given to you by our client. May I have those?

Mr. Hopping: If counsel will indicate any papers in the government's possession that he desires to see—

The Court: Let's get along with the examination. You gentlemen can arrange that, of course.

Mr. Fischer: May I have the privilege later of calling Mr. Dracka back to the stand when these documents which we deliver to them will be introduced in evidence.

Mr. Hopping: I would not object to that, your Honor.

The warehouse was very active from the time it opened in the morning until closing. There were trucks going in and out every day. It closed at five o'clock. As to whether there was an alarm system that notified the people as to the closing, I would say there were two systems. ADT and another one which I do not recall. On the four or five occasions Mr. Stevens helped me pack, it was late in the afternoon. This was so we could get the shipping on to the truck by five o'clock when they closed the warehouse.

When I testified yesterday that the area of room 549 was one thousand feet, I was in error. I meant cubic feet.

When I testified upon direct examination that I rented the room in the fall of 1936, I testified that I don't believe we used the room the same day we moved in but shortly after. I would now say that it was a day or two after the [fol. 121] arrangements were made. I did testify that after arranging for the rental, we made arrangements for getting alcohol. By the word "we" I meant Skampo and myself and did not mean to include Mr. Stevens.

When I testified that we knew a clerk on the north side of Chicago who introduced us to Mr. Frank, I meant by "we" Mr. Skampo and myself.

When I testified that we went to see Mr. Guerman who operated a shooting gallery, I meant Mr. Skampo and myself. I also meant Mr. Skampo and myself when I testified that we either talked or went to see Mr. Frank.

When I testified that we talked to Mr. Frank about getting alcohol, and he told us he could supply us with alcohol, I meant Mr. Skampo and myself.

The warehouse has a naphthalene odor. It is in liquid form, I believe, and crystal. I would not think there was any similarity between the odor of naphtha and alcohol.

Anyone familiar with alcohol could easily detect it. Naphthalene has an odor more like moth balls. Alcohol has many different types. Synthetic, molasses, sugar, grain, all have its different odor. The naphthalene odor was so strong around the warehouse that you could not notice any other. When I stepped on to the fifth floor or the other floor I was on, I got the odor of naphtha.

The only other agreement pertaining to the use of room 549 was to the effect that we had the use of elevator and dock. It was considered live storage. I did not tell Mr. Barrett or Mr. Stevens that I was engaged in the business of selling alcohol. I did make arrangements to rent the room and storage from Mr. Stevens but I do not know if it would go under the heading of conspiring or confederating with Mr. Barrett or Mr. Stevens to violate the laws of the United States in regards to the transportation or storage of alcohol or not. We had no other agreement with Mr. Stevens or the Empire Warehouse Company outside of the original renting and the use of the elevator and dock. Stevens nor Barrett ever talked with me about violating any law. The other facilities of the warehouse that I used on several occasions was the stencilling machine. Everyone used it. The stencilling which is on the exhibit [fol. 122] were on every package that was being shipped. There is nothing about the lettering on this stencil which is different from others commercially used.

Cross-examination.

By Mr. May:

To a certain extent I know the meaning of the terms conspire, combine, confederate. I have plead guilty to all of the charges in the indictment. I understand what I have plead guilty to. I do not understand the terms of law in each and every count. I read the indictment over before I plead guilty. I read each and every count of it. I do not know what is in each and every count because I cannot remember the terms of law.

I was arrested in reference to this case in July, 1939, at Traverse City, Michigan. At that time I was living on a farm and had been there about a week. Mr. King, an agent of the Alcohol Tax Unit, arrested me. I had known him for about two or three years before that. It could

have been four years. I first met him in 1936, when he came to my home in Wyandotte, Michigan, to make an investigation on me. This investigation concerned a still that was seized in Riverview, Michigan. I did not put the still up. I worked in it. The first still I ever worked in was in Romulus, Michigan. That was in 1935. Prior to 1935, I had been connected but very little in the illicit traffic of alcohol. I had hauled a few cases of beer across the river during prohibition days.

Yesterday, I was asked if I had ever transported any alcohol across the river and I said, "no". I did haul Canadian beer and Canadian whisky. That was probably in 1930 and 1931.

I was never arrested and convicted for that.

I believe that when King came to see me in 1936, it was the first time I had seen him, though I am not positive. After that discussion I saw Mr. King every time I came down for my hearing, arraignments, etc. When he came to see me it was a private meeting. I have seen Mr. King in the bowling alley on Grand River. I do not remember [fol. 123] talking to him there alone. Usually, Mr. Skampo and I were together and talked to him alone. I never gave Mr. King any money. I never paid him any money for protection on any of these stills.

I did make a statement when I was arrested in 1939 in connection with this case. I was questioned by Mr. King and another agent. The statement I made to him then contained very closely the same set of facts I am now testifying to. I was not promised anything at the time I made that statement. I was taken by Mr. King to the Ford Motor Company and he got me a job there. Before I made the statement to Mr. King, I believe he told me that Skampo had made a statement. I was told that Skampo had been under arrest, had made a statement, and involved me in this case. I was told that Skampo had told on me and that I should tell everything I knew because of that. Believing Skampo had done this, I told of my connection in this case. I was not told in so many words that if I testified for the government I would not go to jail. I was told, evidently it would be the best thing I could do under my circumstances. There was nothing else I can remember being told. They did not tell me they would look after me. They promised me if I would come down, they would get me transferred to this district. At that

time I was having trouble getting transferred to the Eastern District of Michigan. I was then on parole and am still on parole with the Department of Justice. I am on parole in the Western District of Michigan. The parole officers' headquarters are in Grand Rapids. They told me they would have me transferred to the Eastern District and get me a job here. I believe Mr. King told me this. Mr. King took me to Mr. Doyle and I was transferred.

I served time for a still after having plead guilty. I received four years and served seventeen months and some days. I was sentenced January 28, 1938 and got out July 8, 1939. Prior to going to jail in that case I had been working in a still where I had an accident. That still was in Romulus, Michigan. I was in the hospital, I believe, four months after the accident, having received burns of a serious nature. I could not work because of that. I was [fol. 124] burned on July 1, 1935. I was laid up so that I could not work for a year and a half or two years. I was incapacitated from July, 1935, until the end of 1936 when I started doing lighter work.

While I was out and healing up, I was arrested for the transportation of moonshine. I was nolle prossed on that case. I do not know who recommended the nolle prosee. You were my attorney at that time. I would not say for sure Mr. King recommended my nolle prosee. The Mr. King referred to died January 1, 1940. I did not tell anyone after he died that it was a bad break for me. I did say it was a bad break because I hated to see the man die. I would hate to see anyone die who was a friend of mine. I hate to see anyone die who has promised to help me.

The case I went to Lewisburg on was the Livingston County still. In all, I have been connected with three stills.

The last time I saw Harry Klein to speak about any alcohol or illicit deals was in 1935, except the load Mr. Skampo purchased from the driver. The load Mr. Skampo purchased from the driver came to me and Mr. Skampo in 1936.

I did not make the statement that if Mr. King did not look after me in this case I was going to tell everything about him.

I was in the bowling alley that we have been speaking about on Grand River avenue on several occasions when there were probably 200 or more people there. It was a big place. I have seen agents of the Alcohol Tax Unit in

there. The only one I spoke to was Mr. King. King knew I was in the illicit alcohol business after my arrest in Riverview. I could not say whether or not he knew I was continuing in that business after my arrest. The names I used during the transportation of liquor or alcohol were fictitious names. I knew when I was arrested in this case what jail was like. I don't believe anyone wants to go back to jail.

I do not recall whether Frank was ever in the room in the warehouse in Chicago or not. We had a few com-[fol. 125]plaints that the proof of the alcohol we were shipping was not up to par. The odor was not good and clean.

I had nothing to do with nor any interest in the distillery in Racine, Wisconsin. The first distillery I went into business with Skampo on was the Romulus still. I had \$4000.00 in that. He did not have any money in it. I also went in with Skampo on the still in Riverview. Skampo did not have any money in that. It was all my money.

During the time we started the Romulus still, Skampo had 25% interest. I believe he had one-third interest in the Riverview still. The reason I gave him such an interest was because I was unable to take care of it myself. He did most of the buying and selling. I did everything I could such as the manual labor. I do not recall if Skampo testified that he had invested money with me in a still. He might have. Speaking of money, a nickel is money. I have not been convicted of any other crime, other than the one I was sentenced to serve four years for.

Q. How many times have you been arrested?

Mr. Hopping: I object to that.

The Court: Wait a minute. Objection sustained.

By Mr. May:

Q. Have you been arrested for illicit traffic of alcohol?

Mr. Hopping: Object, your Honor.

The Court: Objection sustained.

Mr. May: I think we have a right to show like.

The Court: Same ruling.

Mr. May: Exception, for the record.

I know a man by the name of Joe Martin. He was in the alcohol business. I bought alcohol from him on numer-

ous occasions. He had a driver but I do not know for sure what his name was. I believe it was O'Brien. I did speak of a driver of Klein's coming to me with alcohol. It was the same driver as Martin's. That driver who was the driver for Martin did deliver alcohol to me on numerous occasions.

[fol. 126] Re-direct examination.

By Mr. Hopping:

The driver by the name of O'Brien brought alcohol to me from Harry Klein and Joe Martin. I believe it was in 1933 and 1934 that he brought me alcohol from Harry Klein. It was probably the same time that he brought me alcohol from Joe Martin. I do not know whether Joe Martin and Harry Klein were interested in the same deliveries he brought me.

Q. With whom did you make arrangements for delivery of the alcohol which O'Brien brought you from Harry Klein?

Mr. May: I will object to that question, please, being argumentative.

The Court: Read the question.

(The question was read by the reporter.)

Mr. May: And that calls for a conclusion on his part.

The Court: He may answer.

Mr. May: Exception.

A. When I purchased the alcohol from Mr. Klein, I made the arrangements with Mr. Klein.

Mr. May: I object to that and ask to have it stricken from the record the word "arrangements"; it calls for a conclusion.

The Court: Motion denied.

Mr. May: Exception.

The instances that I got alcohol from Harry Klein, I drove my car to a certain location and the driver would take the car and load it. I spoke to Harry Klein usually by phone at the bowling alley or at his home. The deliveries were made by O'Brien either the same day or thereabouts. When O'Brien delivered the alcohol from Joe Martin, I probably placed the orders by going to the

bowling alley and meeting O'Brien or meeting Martin. That was the same place where I gave the orders for alcohol from Harry Klein. I usually paid the driver, Mr. Martin, or Mr. Klein. I have given orders directly to Joe Martin for alcohol. I do not recall how many occasions I gave orders to Harry Klein for alcohol which were [fol. 127] delivered by O'Brien, though it did occur on several occasions.

By Mr. Hopping:

Q. When was that?

A. I would say some time in 1934.

Q. What part of 1934?

Mr. Frederick: If the Court please, I wish to note an objection on behalf of the defendant Braverman as being a time without the indictment on which he is tried.

The Court: Objection overruled.

Mr. Frederick: Exception.

A. The time would probably be the fall or summer of 1934.

I have seen Joe Martin in the bookie at 9666 Grand River and in conversation with Harry Klein. I never overheard any of their conversations. I do not know how long Joe Martin was in the alcohol business. I believe he was in the business during the times I saw him in Harry Klein's bookie. It was during 1933 and into the fall of 1934 that I saw him there. I did not ever order alcohol from anybody else in Harry Klein's bookie, except Harry Klein, Joe Martin or O'Brien. No one else in the building would know I was giving such orders. To my knowledge, Mr. King knew I was in the alcohol business from the time I was arrested in the Riverview still. I do not know if he knew at any time in advance of my arrest that I was in the alcohol business and permitted me to remain in it.

Mr. May acted as my attorney in the Livingston County and the Riverview still cases. The Riverview still was seized in the summer of 1936. I had a hearing before the Commissioner. Mr. May was my attorney at the hearing. I discussed the case with him before that. I do not recall all that was said to him or whether I told him of my connection with that still and my activities in the alcohol business. I told him the trouble I was in and what I expected him to do.

When the Livingston case came up, I again employed Mr. May as my attorney. His employment as such ended when the case ended. The partner pleaded guilty and they nolle prossed me. I believe Mr. May was present in court [fol. 128] when that happened. I do not recall that Mr. King was. I re-employed Mr. May as my attorney in August, 1937. I pleaded guilty in that case. Mr. May represented me up to that time. I talked with him in regard to my connection with the still in Livingston County. I did not advise him of my activities in the alcohol business outside of the case we were in. Mr. King was on the seizure of the Livingston County still. Everyone of the defendants in that case plead guilty. I do not know of any protection being accorded anyone in that still by any officer of the government.

Q. When did Mr. May's employment, as counsel, end in that case?

Mr. Frederick: If the Court please, I wish at this time to note an objection to a continuation of these questions on behalf of the defendant Braverman, inasmuch as it is correlative matter, immaterial to the crime here charged, and prejudicial insofar as the other defendants are concerned.

The Court: Objection overruled. The subject, Mr. May opened up himself. Whether it is damaging to the other defendants, is immaterial. Counsel for the Government has a right to go into it.

Mr. Frederick: I submit it is correlative and not material to the offense on which the defendants are here on trial. Exception.

Mr. Fischer: On behalf of the defendants Stevens and Barrett, I join in those exceptions.

By Mr. Hopping:

Q. Were you arrested in connection with the Romulus still?

A. I was not, no, sir.

Q. Were you present at the Romulus still when any arrests were made?

A. I was not.

Mr. Frederick: I object to that, if the Court please, for the same reason, inasmuch as what they did in that still

is not a part of this offense, not part of this conspiracy, charged as such.

The Court: The answer may stand.

Mr. Frederick: Exception.

[fol. 129] Mr. Fischer: Representing Mr. Stevens and Mr. Barrett, I wish to join in that exception.

The Court: Same ruling.

By Mr. Hopping:

Q. Did you talk with any of the defendants in this case, after the seizure of the Romulus still, regarding that seizure?

Mr. Frederick: I wish to object to that, if the Court please, for the same reason. It is totally unconnected with the offense here charged; any conversations with the defendants pertaining to that offense is immaterial to the issues here.

The Court: Objection overruled.

Mr. Frederick: Exception.

Mr. Fischer: Representing the defendants Stevens and Barrett, I wish to join in those exceptions.

The Court: All right, read the question.

(The question was read by the reporter.)

A. I believe I have, yes, sir.

By Mr. Hopping:

Q. With which of the defendants have you talked?

A. I believe it was Mr. Braverman.

Q. When?

The Court: Who?

A. Mr. Braverman.

Q. When did you talk with him about it?

A. Well, I never talked very much about it, outside of I expressed my feelings, that it was too bad, and that's about all that was said.

Q. Where were you and Mr. Braverman when you talked about that?

Mr. Frederick: I wish to note the same objection to this question, for the same reason, it is a correlative matter, prejudicial, has no bearing upon the offense here charged.

The Court: He may answer.

Mr. Frederick: And of no probative value so far as this case is concerned.

Mr. Fischer: And representing Mr. Stevens and Mr. Barrett, I wish to join in that exception, if the Court please.

Mr. Frederick: I noted an exception.

Mr. Fischer: And for the additional reason it was outside of the presence of the defendants.

[fol. 130] Mr. May: The same objection and exception, if the Court please, as to the defendants Klein and Frank.

The time I met Mr. Braverman, when we had this conversation, was in the fall of 1935, at the bowling alley on Grand River. Mr. Skampo introduced me to Mr. Braverman. I was there but a few minutes and said it was too bad it had to happen.

Q. Do you recall how the subject of the seizure of the Romulus still happened to be under discussion at the time?

Mr. Frederick: I object to the question in that form, argumentative.

The Court: Objection overruled.

Mr. Frederick: Exception.

The Court: Read the question.

(The question was read by the reporter.)

A. I don't recall how it happened to be under discussion at that time, outside of I was introduced as Mr. Drack, to Mr. Braverman, and I just said the words to the effect it was just too bad it had to happen, yes, sir.

Q. Well, had someone present there said something about the seizure, before you made that remark?

A. Mr. Skampo may have said something. I don't recall.

Q. Was Mr. Braverman present, when Mr. Skampo made his remark?

A. That I do not recall.

There was no conversation at that time in regard to shipping alcohol, to my knowledge. I am not sure whether I have ever talked to Mr. Braverman at any other time about the Romulus still or not. I may have. It is possible. At the time I had the conversation with Mr. Braverman, that I just testified to, I was just able to get-around following the effects of the burns I had received. I was able to walk but could not pick up anything. The injury was pri-

marily to my hands, face and head. I was able to talk all right.

In looking at Exhibits 98 and 99, I notice the lettering on the truck, "S. S. Manufacturing Company, screw machine products, Chicago, Milwaukee." That lettering was on the truck which delivered alcohol to me. I don't believe I ever saw the same lettering on any other truck. That [fol. 131] lettering would distinguish this truck to me. I do not know what the S. S. Manufacturing Company stands for. The vehicles I saw in the warehouse were commercial, pick-up, light draymen, etc.

The car Mr. Frank brought the alcohol in was a passenger vehicle. I do not know how many times Mr. Frank brought alcohol to the warehouse in that automobile, though it could have been twenty or more. These trips were between approximately November, 1936 and April, 1937. Mr. Frank usually arrived in the morning about 8:30. Mr. Stevens and I were present when Mr. Frank arrived.

Exhibit 101 is a picture of the corridor in the Empire Warehouse that the door to room 549 opens into.

If the boxes were piled one inside of the other, we could get twenty to twenty-five in the room at one time.

In the spring of 1937, I had over one hundred cans of alcohol in the room at one time. That alcohol was obtained by me from the Racine still.

Recross-examination.

By Mr. Fischer:

On numerous occasions I have seen other passengers' cars besides Mr. Frank's at the docks of the Empire Warehouse. Mr. Stevens arrived at the warehouse at eight in the morning and remained until five, except once.

Every room in the warehouse has the same type door. There was no difference outside the number and the amount of cubic feet the room contained. There were doors on both sides of the corridor. There were about twenty-five doors down one corridor. The wall in the corridor was fireproof tile.

I never talked with Mr. Stevens or Mr. Barrett about the Racine distillery. The alcohol that came from the Racine distillery all came in a Dodge truck. None of it came in a passenger car.

Cross-examination.**By Mr. May:**

I plead guilty to the Livingston still in January, 1938 and was sentenced on January 28th. I plead guilty because I was guilty.

[fol. 132] Redirect examination.

By Mr. Hopping:

In looking at Exhibit 101, part of the picture which has the number 549, on it is the door which appears to be open. You can just see it. It opens into the corridor which is very narrow. You cannot see the opening in this picture, but you can see the hinges on door 549. The entrance is behind the door. The door opens all the way up so as not to block the corridor. You could not go directly into room 549 from the elevator, because with the door open as it is in the picture it blocked the corridor.

While I was in there, there was dead storage in every one of the rooms down that corridor. Room 549 was the only room used in that corridor while I was there, except for dead storage.

Recross-examination.**By Mr. Fischer:**

There might have been other live storage down that corridor. The doors would have to be open to know if there was anything in the room. There was nothing different between room 549 outside of the number and amount of cubic feet in the room, from others. The larger rooms, that is, containing one thousand cubic feet, were usually close to the elevator.

ROUBA, TONY, called on behalf of the Government, testified as follows:

Direct examination.**By Mr. Hopping:**

I am one of the defendants in this case and have plead guilty to the charge in the indictment. I live in Brighton

Park. That is on the southwest side of Chicago. In the Spring of 1936, I was working in a tavern. In January, 1937, I was employed at the Racine Distillery. I was employed by Stanley Slesur. I helped them drive a truck. I drove a Dodge:

[fol. 133] Government's Exhibits 98 and 99 is a picture of the truck which we were driving. I first started to drive this truck in January. When I started, I was picking up sugar at 4549 South Marshfield, Chicago, and taking it down to Racine. When I said "we" I meant Speed, that is, Stanley. I took 100 bags. They were 100-lb. bags. When I got to Racine I just threw them off in the garage. I could not say where the distillery was located in Racine. It was in a big building; radio manufacturing. I took loads of sugar to the Racine Distillery about three times a week from January to April of 1937. I did not stay at the distillery but went back to Chicago the next morning. I drove back in the same truck which was loaded with 90 to 100 cans, 5-gallon cans of alcohol. When I went back, Stanley Wasielewski was with me. I drove the truck to 4759 Rockwell street, a grocery store, put the truck into the alley and unloaded in a garage. The garage was located at 4750 Rockwell street.

After unloading all of the alcohol into the garage, I would go home and Stanley would take care of the distributing. I made about three trips a week with alcohol from the Racine Distillery to the garage on Rockwell street. This was during the same time that I hauled sugar. I was paid by Stanley Slesur. I recognize him in the courtroom. He is the man who hired me. I used the same Dodge truck all the time. I did not know about any other deliveries with the truck except to that garage on Rockwell street.

I lived about thirty years on the south side of Chicago and am familiar with the streets. I know the location of 5041 Lake Park avenue but I was never there. That is the address of the Empire Warehouse. The number on Rockwell street is 4759 South Rockwell street. I could not say how far Lake Park avenue is from Rockwell street. I now live at 4542 South Fairfield. That is about five blocks from the garage on Rockwell street. I have been on Lake Park avenue. It is about three or four miles, with respect to Rockwell street, I suppose. I don't know.

Q. Who else did you see in connection with hauling this alcohol in this truck, Exhibits 98 and 99?
[fol. 134] A. Stanley Slesur and Speed.

The Court: Is he a defendant here, Wasieleuski?

Mr. Hopping: No, your Honor, he is named as a co-conspirator but not a defendant.

The Court: What is the name? Speed? This Speed is Stanley Wasieleuski?

The Witness: Right.

I never saw any other drivers on that truck. I was paid \$50.00 a week. I never saw alcohol taken out of the truck and placed anywhere else except in the garage on Rockwell street. I never talked with Wasieleuski about what disposition was made of the alcohol.

Mr. May: Would your Honor like to look at this case while this witness is on? 265 Michigan.

The Court: Yes.

Cross-examination.

By Mr. Frederick:

At the present time my home is in Chicago. I did plead guilty to all counts of this indictment. I have never been arrested and convicted of any other crime.

In 1936 I was working in a garage off and on, and everything, washing and cleaning cars. I worked at the Town of Lake Garage, 4855 South Marshfield, in Chicago. I worked there off and on. I could not say how long. I did help off and on in a tavern too. It was at the same time. When I got a chance I would help in a tavern. I did not have steady employment. I never had any steady employment prior to the spring of 1936. I am thirty, and never had a steady job prior to the spring of 1936. I could not say where I worked following the spring of 1936. Off and on I was working. I have not had a steady job since the spring of 1936. I had not worked in any other distillery than the Racine Distillery. I transported alcohol in the automobile from Racine to Chicago for about three months in 1937. Stanley Slesur hired me. He ran the Racine Distillery. He hired me to work there in 1937 sometime. He hired me in Chicago. I was supposed to help on the truck. That is what he told me when he employed me. I

[fol. 135] had worked for Stanley Slesur off and on before. I worked in 1936 a little bit. This was at Fox Lake, driving a truck. I was carrying alcohol on that truck. I was carrying that alcohol in Chicago, from a distillery in Chicago, to some other address in Chicago. I worked for Stanley for about a month or two in that business. Those were the only two times I ever worked for Stanley.

I never saw anyone else about the still in Racine that was in charge. Al Johnson was in there too. I don't know who was in charge. I did take orders from Johnson. No one else. I never saw Harry Braverman and never had any business with Harry Braverman. I never saw him at the still in Racine. I never had any business in the City of Detroit. I was never in and around the City of Detroit in 1935. This trial is my first time in Detroit.

Cross-examination.

By Mr. May:

I never saw Harry Klein at that still in Racine. I never saw him before this trial. I never saw Frank before. I never saw him at Racine, Wisconsin, or at the still.

Cross-examination.

By Mr. Cavanagh:

I never saw Mr. Stevens or Mr. Barrett before seeing them in this courthouse.

STEFFES, E. C., called on behalf of the Government, testified as follows:

Direct examination.

By Mr. Hopping:

My business is motor cars and trucks, located at 9201 South Ashland avenue, Chicago. I have been in the automobile business approximately fifteen years. I received a subpoena to appear at this trial and bring with me some [fol. 136] records concerning the sale of a Dodge truck. I have the records with me. I prepared the records personally in November 1936 and in June, 1935. The purchaser

of that truck was Stanley Slesur. He is sitting in the courtroom.

Mr. Frederick: I wish to note an objection to this—as far as this testimony goes, to the defendant Braverman, being out of his presence, and immaterial and prejudicial.

The Court: Overruled.

Mr. Frederick: And exception.

Mr. Cavanaugh: May we note the same ruling and exception on behalf of the defendants Stevens and Barrett.

The Court: Yes.

The records I have were made immediately following the transaction which they record. I made them myself and they accurately record the transaction. They are records which are made in the ordinary course of my business.

One record shows the sale of a 1935 Dodge truck on June 11th, 1935 to Stanley Slesur, and the terms of the sale. The other record shows November 19, 1936, on a Model LH-27 Dodge 2-ton truck, and the terms of the sale. The records were introduced in evidence as Exhibits 103 and 104.

I saw the truck which was sold to Mr. Slesur. Government's Exhibits 98 and 99 are pictures of the truck. It is a Dodge, 1935. I sold Mr. Slesur a 1935 truck. At that time he brought the 1935 truck back in and traded it on a purchase of a larger truck. The one he bought is the one pictured in Exhibits 98 and 99. It was a new truck. The printing S & S Manufacturing Company was put on at his order. I do not know what S & S stands for. Stanley Slesur was alone at the time. I imagine I saw Stanley Slesur a half dozen times while the truck was being readied. That would be somewhere from the first of November to the 19th, when delivery was made.

Q. What was your conversation?

Mr. Frederick: I wish to note an objection to any conversation had charging the defendant with conspiracy.

The Court: I don't hear what you are talking about.

Mr. Frederick: The statement of the co-conspirator cannot be used to prove any conspiracy against the defendant [fol. 137] as charged. Further, as being in the absence of the defendant Braverman. Further, as being immaterial to the issues here on trial.

The Court: He may answer.

Mr. Frederick: And exception.

Mr. May: The same objection and exception for Klein and Frank.

Mr. Fisher: And the same exception as to defendants Barrett and Stevens.

The talk was concerning details of the body and when it would be ready. Nothing was said as to what the truck was to be used for outside of his business. The second time Stanley Slesur brought the driver in and asked delivery from our clerk. I presume it was on November 19th. I do not know who the driver was beyond the fact the name was Speedy. I made a record of the motor number of the truck. It appears on the exhibit. I made the entry of the motor number myself. I examined the truck. The motor number appears on the left hand side of the motor block at the front. It is on the third line of Exhibit 103 and is T637821. There is also a serial number on Exhibit 103 which is 8515944.

On Exhibit 104, the motor number is T637821 and serial number 8376228. Exhibit 103 contains the motor number of the Dodge truck pictured in Exhibits 98 and 99. I did not see this Dodge truck after I made delivery to Stanley Slesur. I had no personal knowledge as to what the truck was used for after delivery.

From the exhibits it appears that Steffes was the salesman. There also appears the model of the truck, serial and motor numbers. The settlement means the way it was paid for. They turned in a 1935 Dodge truck; an allowance of \$679.00, and the balance was carried through the finance plan. The entries on the back relate to the original cost of the Dodge 2-ton truck as it came into our records. I could not tell you if I received payments for that truck after delivery. The Commercial Credit Company have all the records on that. I saw no one in connection with payments on that truck.

Entry on Exhibit 104 means that the papers were sent from the Commercial Credit Company to us. We mailed [fol. 138] them out after the truck was paid for and the transaction completed. The entries on the back of that sheet relate to the original cost of the truck as it was brought to our company before selling. That is the cost of the truck purchased in 1935. It was sent into our place on April 22, and sold on June 11.

Cross-examination:

By Mr. Cavanagh:

I do not know Mr. Stevens or Mr. Barrett. I never saw them before seeing them in the court room.

EMPEY, ROBERT A., called on behalf of the Government, testified as follows:

Direct examination:

By Mr. Hopping:

I am an investigator of the Alcohol Tax Unit, Bureau of Internal Revenue. I entered the Government's service February, 1929. I did not participate in a seizure at Racine, Wisconsin in the spring of 1938. I did participate in a seizure in Racine, Wisconsin, on March 16th, 1937. I made a seizure in the basement of the old Racine Manufacturing business, corner of 6th and Market streets, Racine, Wisconsin.

Mr. Cavanagh: If your Honor please, I would like to make an objection on behalf of the defendant Barrett and in behalf of the defendant Stevens, as to any seizure in Racine, Wisconsin. There is no suggestion hereof any implication as far as they are concerned.

Mr. Frederick: I wish to note the same objection on behalf of the defendant Braverman.

The Court: What are you claiming for this?

Mr. Hopping: I expect to show that this Dodge truck and other things were seized at that time in a distillery at Racine, Wisconsin.

The Court: Objection overruled.

[fol. 139] Mr. May: The same objection and exception noted for defendants Klein and Frank.

Mr. Frederick: And exception noted for defendant Braverman.

Q. Will you state what was seized at Racine, Wisconsin on that occasion that you speak of?

A. At that time we seized a complete alcohol distillery. Found ninety-eight five-gallon cans full of alcohol on the

first floor. At the rear, found a 1936 van body Dodge truck on these premises. Also, 575 gallons of—or, empty five-gallon cans; 127 sacks of sugar; 37,000 some odd gallons of mash; I believe, 510 gallons of alcohol.

I took samples of the alcohol which were received there, which were sent to the chemist's office in Chicago. The chemist from that office is here. I also took samples of the mash seized there and sent them to the same chemist for analysis. The motor number of the Dodge truck which I seized was T27-3969, serial No. 8515944. Government's Exhibit 99 is a picture of the truck we seized. Government's Exhibit 98 is a front view of the same truck.

There was no sign posted at the distillery indicating that it was registered with the Federal Government. There was no bond posted for that distillery. The apparatus was not registered with the Clerk of Internal Revenue in that District. It was not registered with the Supervisor of the Alcohol Tax Unit of that District. The distillery equipment seized was all destroyed. The motor put in storage at Milwaukee, as was the sugar. Except for the samples, the alcohol and mash was destroyed on the premises. I did not see anybody on the premises at the time I was there.

Investigator Shinholtz of the Alcohol Tax Unit, and police officers, Tomaszek and Schmidt, of Racine, Wisconsin, were with me. Investigator Shinholtz is no longer in the Government service.

Mr. May: At this time I make a motion to strike from the record all of the testimony of this witness, having no connection with the defendants, showing no connection with defendants Klein and Frank, having no probative value, having no connection between the charges contained in the indictment and the defendants here on trial.

[fol. 140] The Court: Motion denied.

Mr. May: Exception.

Mr. Frederick: And the same objection and exception on behalf of defendant Braverman.

Mr. Cavanagh: And the same, if the Court please, in behalf of the defendant Barrett.

The Court: Any cross-examination?

Mr. May: No, your Honor.

(Witness excused.)

SCHAEFER, ARTHUR H., called on behalf of the Government, testified as follows:

Direct examination.

By Mr. Hopping:

I am a chemist with the Bureau of Internal Revenue, stationed at Chicago, Illinois. I know Mr. Empey. I received some samples which Mr. Empey had taken, though not through him. I made an analysis of those samples. I have a record of that analysis. There were five samples in all. The samples were destroyed.

Government's Exhibit 105 is a letter of transmittal. The record of the samples I analyzed bear a case number giving the particular seizure. Each sample was later given a laboratory number which I have. There was an original and copy of the letter of transmittal delivered to me with these samples. Exhibit 105 is the letter of transmittal. My signature, my own initial appears on it. I received it from Investigator William E. Patterson whose signature appears thereon. He delivered the samples to me. I don't remember if any one was with him when he brought them in. There is no other record in existence relative to the source of the samples, except a copy of a report of the analysis which was made under my direction. A record is made in our laboratory of the source of exhibits received for analysis.

Mr. Hopping: I offer in evidence Government's Exhibit 105.

[fol. 141] Mr. Frederick: I wish to object to the introduction of that Exhibit, inasmuch as it does not appear to have any connection between the testimony here introduced and that which may be contained on the Exhibit; a self-serving instrument, improperly identified by this witness, his signature merely being evidence as having received it, relating to articles which are not connected up with the proof in these proceedings, and it being prejudicial to the defendants here upon trial. Further, that it relates to an analysis, by the statements of this witness, by someone else, and is the result of an analysis made by someone under his direction, and therefore, is subject to the objection of hearsay.

Mr. May: I make the same objection, on behalf of the defendants, Klein and Frank, if the Court please.

Mr. Hopping: Your Honor, this record, which I am offering, is offered as the record of a department of the Government, one of the records made in the ordinary course of their business, as to certain samples which this witness testified he worked on. If the Exhibit so identified speaks for itself, shows a connection with the case as now presented—

The Court: That is what they are complaining of, it is not properly identified by the man who seized, delivered to the man who analyzed, or if a third party, the man who did deliver.

Mr. Hopping: My point, if the Court please, is, that if this exhibit on its face, being a record, which if properly kept, shows the connection, that that, in the light of the testimony received here, is sufficient.

The Court: Well, there's been an analysis made of these various samples, but there is no evidence here that those analyses are made of the property that was seized at this place. Well, there is no need arguing about it. You have got to identify the sample to the chemist, otherwise, it is immaterial.

Mr. Hopping: Very well. I will withdraw the witness further examination at this time.

The Court: You may have some other witnesses here. You may have this witness set aside, if you wish, and call another witness, and reoffer this. For the present, I will sustain the objection.

(Witness excused.)

[fol. 142] PACENTE, CHARLES, called on behalf of the Government, testified as follows:

Direct examination.

By Mr. Hopping:

I live in Chicago, Illinois. I am an express man. My address is 1544 E. 53rd Street. I have been in business in Chicago for twenty years. I do general cartage, moving and everything. I have one truck which I drive myself. I do keep records of the hauling I do. I kept records for the period beginning July, 1936 and continuing through 1936, 1937 and 1938. I did some hauling to and from the

Empire Warehouse during that time and have a record of this hauling.

July 3rd, 1936 was the first date I did such hauling. On that date I did some hauling for Don Nelson—no; I don't know who that was for. I did do some hauling for Don Nelson at that place but not on that date. I started hauling for Don Nelson November 21st, 1936. The first contact I had with him was when I was standing near my truck near 53rd and Lake Park. Don Nelson came up to me. I did not know him at the time. He asked if I would move some boxes from the Empire. I see the Don Nelson I speak of in the courtroom. He is Dracka, a defendant in this case.

When he first spoke to me in November, he wanted to know if I would like to haul some boxes from the Empire Warehouse to Roadway Express. I said I would and went immediately to the Empire, 5041 Lake Park avenue. I went to the loading platform on the first floor. I saw their regular warehouse man. I had been there a number of times before. I do not recall who was on the loading dock when I arrived. Don Nelson was there. I did not know that man by any other name than Don Nelson, other than what I heard in court.

When I got to the warehouse I backed my truck to the elevator. There were five boxes on the elevator. The boxes were similar to the box in the courtroom which is [fol. 143] Government's Exhibit 73. The boxes were closed. I am not sure of the markings that were on them, though I think they were either Star Products or Perfect Carpet Cleaners. There were not other markings on them except what is on the boxes now.

On the loading platform I just talked to Don Nelson. We both moved them off the elevator and put them on the truck. I took them to the Roadway Transit Company which is about the 900 block on Pershing road. No one went with me. I there unloaded them on the platform, got my bill signed, and drove out. I got my shipping ticket, bill of lading, signed. I had received the bill of lading from Don at the warehouse. It was all made out when I received it. I did not do any writing on that particular bill. When I said I had the bill of lading signed, I meant that upon delivery of boxes at a freight station, you are to have a receipt for it. They stamp it, sign the name and give it back to me. After doing this, I drove out and saw Don

waiting outside in a car. I handed him the bill of lading and went on. I think there were two sheets to the bill of lading when I received it. The dock keeps one and we get two. It was that which I gave Don when I came back.

Nelson paid me \$4.00 or \$5.00. I think I had a price of \$4.00 for five boxes which I quoted to Don Nelson before we started. The number of boxes varied and the price was fifty cents for each box over five.

My records show I made sixty-eight deliveries and pickups for Don Nelson at the Empire Warehouse. That includes boxes to the Roadway, empty boxes, picked up, cartons picked up, and banding wire that I bought. I made daily records of the haulings for Don Nelson. They show November 21st, 1936, \$4.00 for delivering, I believe, five boxes to Roadway Express.

A. The 24th of November, to the Roadway Express, \$4.00; 25th of November, Roadway Express, \$4.00; 27th of November, Roadway Express, \$4.00; 28th of November, Roadway Express, \$4.00; 30th of November, Roadway Express, \$9.00; December 2, Roadway Express, was a three dollar item; December 3, was Roadway Express, \$4.00 item; December 9, \$4.00 item, Roadway Express; December 12, picking up boxes at Republic Box Company, \$6.00. [fol. 144] Q. Where is the Republic Box Company located?

A. They are about 800 North Halsted street.

Q. Continue, please.

A. On the 14th of December, I delivered to the Roadway Express, a \$6.00 item; the 16th, Roadway Express, \$5.00 item; the 21st, Roadway Express, \$4.00 item; 28th of December, Roadway Express, \$4.00 item; 29th, Roadway Express, \$5.00 item; 30th, Roadway Express, \$5.00 item; 31st, Roadway Express, \$6.00 item. January 7, Roadway Express, \$4.00 item.

Q. That is what year, now?

A. 1937.

Q. All of them you read up to that were 1936?

A. That's right. January 9, Roadway Express, \$8.00 item; January 13th, Roadway Express, \$4.00 item; January 13th was boxes, \$5.00.

Q. Two haulings on the same day?

A. Weil, these boxes I picked up, boxes, empty boxes.

Q. Where?

A. From the Republic Box Company. That's a \$5.00 item.

Q. Now, you mean you picked up empty boxes and there was also another item the same day?

A. That's right.

Q. The other item was what?

A. Filled boxes to the Roadway Transit.

Q. That was how much?

A. That was \$4.00; the 15th of January, Roadway Express, \$6.50; the 18th, I picked up boxes and cartons from the Republic Box Company and Acorn Carton Company, \$5.50.

Q. Where is the Acorn Carton Company?

A. 2600 Wabash Avenue, or Indiana Avenue, I am not positive, but they are just a block apart.

Q. Continue, please.

A. On the 20th of January, I delivered to Roadway Express, \$6.50; the 26th, Roadway, \$5.00; the 22nd, Roadway, \$5.00; the 25th, I picked up more boxes and cartons.

Q. From the same place?

[fol. 145] A. Republic Box Company and Acorn Carton Company. That's a \$6.00 item. February 2nd, delivered to Roadway, \$5.00; the 12th, delivered to Roadway, \$6.00; the 13th, \$5.50; the 19th, \$6.00 item; the 19th, I picked up boxes and cartons at the Republic Box Company and Acorn Carton Company; that was \$6.00; on the 20th, Roadway, a \$7.00 item; the 25th, was Roadway, \$5.00 item; the 27th, was Roadway, \$5.00 item; March 2nd, Roadway, a \$5.00 item. There's March 1. That was Roadway, \$4.00 item; March 1, boxes and cartons, and banding wire, from the Republic Box Company and Acorn, and the banding wire was from some steel company on 39th street. I don't know the name of it, I just paid cash for it. That was \$7.50. On the 3rd of March was Roadway, \$5.50; the 5th of March was Roadway, \$6.00; the 8th, boxes and so forth, that's cartons and so forth, a \$6.00 item. I mean I picked up empty boxes at the Republic and empty cartons at Acorn and took them to the Empire Warehouse..

A. The 10th was boxes to the Roadway, \$6.50. The 10th, the same day, I took boxes to the Liberty Transit Company. That was \$6.50; on the 12th, I took boxes to Roadway, \$6.00; on the 23rd, here, I have got a large item here, but I don't know just what I did, whether I picked up empty boxes or delivered full boxes, but is a \$12.00 item. I didn't list it in my book. Evidently, I made a mistake.

Q. That was what date?

A. The 23rd of March.

Q. 1937?

A. That's right. On the 24th, delivered to Roadway, \$6.00. That's March. April 3, 1937, Roadway, a \$5.00 item; the 5th, I picked up boxes—just boxes—at the Republic Box Company. That's a \$5.00 item.

Q. And delivered them where?

A. Empire Warehouse. On the 5th, I delivered to Roadway, for \$6.00. On the 8th I picked up just cartons, \$2.00, from the Acorn Carton Company.

Q. And delivered them where?

A. To the Empire Warehouse. On the 9th, I picked up just boxes from Republic, and delivered them to the Empire Warehouse, \$5.00; on the 12th of April, I delivered [fol. 146] to Roadway for \$6.50; on the 16th, delivered to Roadway, \$5.00; on the 19th, delivered to Roadway, \$5.50; on the 21st, I picked up boxes and cartons at the Republic Box Company and Acorn Carton Company, and delivered them to the Empire Warehouse, \$6.50; on the 21st, delivered to Roadway, for \$6.00; on the 23rd, delivered to Roadway, \$5.50; on the 26th, delivered to Roadway, \$5.50; on the 27th, picked up boxes, cartons, and banding iron for \$7.00. The 5th of May, here I think—the 11th of May I made a delivery to Roadway for \$3.00 item; the 12th of May, I made a delivery to Roadway, \$2.00. That was all.

They were the same type of boxes each time. The amount of money indicates the number of boxes hauled, that is, at a rate of fifty cents a box or \$4.00 for five. When I made a pick-up at the warehouse, I always got the boxes from the freight elevator. When I went there, I would see Don or maybe Mr. Stevens, a defendant in the courtroom. To the best of my recollection, Mr. Stevens was there every day I went there. Don Nelson was too. I was always paid by Mr. Nelson in cash. He would pay me on the dock at the warehouse, in the front office, or somewhere. Fred Stevens was not always present on the dock of the warehouse, when Nelson paid me. Fred Stevens never paid me. No one ever paid me except Don Nelson. Sometimes Don would come up to my office, 53rd and Lake Park to tell me to call for boxes at the warehouse. I was just two blocks away. Sometimes he would telephone. I know Don Nelson's voice. I did not have a standing order to pick up boxes at a regular time. I received a call on

each occasion. I do not remember ever receiving a call from anyone other than Don Nelson. I do not remember receiving a call from Mr. Stevens. If I did, it would be through the say so of Don Nelson. Sometimes he would not be there. Mr. Stevens might call me when Nelson was away. This may have happened once or twice at the most. On these occasions the boxes were handled in the same way. They were waiting for me on the elevator. I always received a bill of lading when I picked up a group of boxes. It was not always made out. Sometimes I made them out. My records will not disclose when I made out a bill of lading. [fol. 147] It may have occurred five or six times, though I am not positive. I saw Mr. Stevens make out the bills of lading five, six or seven times. The rest of the times the bills of lading were already made out when I saw them. I think I have seen Don Nelson make one out, though I do not know how many times. When I made out the bill of lading Don stood right over me and gave me the information to put down.

I never had any personal knowledge of the contents of the boxes. Where the bill of lading required an entry as to the type of merchandise being shipped, I put in rug cleaning fluid. Mr. Stevens or Mr. Nelson told me to do that. I never personally inspected the contents of any of these packages. Don Nelson did not give me any other information to fill in on the bills of lading. As to the consignee, I don't know whether it was Rug Life or Star Products, though I did use those two names. I do not remember any other names used as to consignee or consignor. Nelson gave me those names to put on the bills of lading. I do not recall what Fred Stevens put down when he made out the bills of lading. I think Don Nelson was present each time that Fred Stevens made out the bills of lading. I don't recall whether Don Nelson told Fred Stevens what to put in the bill of lading or not. I don't remember any instances that he did. Fred Stevens wrote Rug Life as consignee—no—I never paid any attention when he made them out.

I was given to understand that Rug Life, Incorporated was represented by Don Nelson, and I never saw anyone else who represented them. I never knew of anyone representing Star Products except Don Nelson, nor of the Perfect Carpet Cleaners.

I have been an express man in Chicago for twenty years and I done considerable hauling to the trucking lines. The Roadway Transit dock is at 39th street. I think the next street is Lowe or Wallace. It is two blocks east of Halsted street. I would say it is about four miles from the Empire Warehouse. I know it is between Lowe and Wallace on 39th. Our general charge for hauling and shipping of five boxes such as Exhibit 3, is about \$1.00 per article. I am [fol. 148] familiar with the method of doing business by such companies as the Roadway Transit. I think they had a pickup service in 1936 and 1937. If it was customary for the Roadway Transit Company to give a refund to shippers who delivered their own shipments to the Roadway Transit dock, I did not know of it. I never received anything.

I have been on all floors of the warehouse but not when I was hauling for Don Nelson. During that time I never got past the elevator. Don Nelson brought the boxes down to the loading dock on the elevator. Mr. Stevens operated the elevator in each instance. I was never in Room 549 in the Empire Warehouse. I never talked with Fred Stevens as to the kind of business this was. I never heard Fred Stevens and Don Nelson ever say anything about the Rug Life business.

The first date I picked up empty boxes from the Republic Box Company was December 12th, 1936. I got a call from Don. He gave me a bill that had the Republic Box Company on it with twenty-five boxes consigned to Merchants Chemical Company. The bill was paid. I went to the Republic Box Company and got them. I just walked in the office, presented the paid bill and loaded the boxes. I think I was in the warehouse when he handed me that bill. It was in the morning around ten o'clock and he was either on the receiving platform or maybe the front office. I think there was another truck parked in there. I must have received a call at my office to come over and pick up those boxes. I parked my truck out in front, went in and got the bill from Nelson. He told me over the telephone what he wanted me to do. I imagine I met Don Nelson in the front office. It is so long ago it is hard to remember. I imagine Mr. Carroll who is here in the courtroom, was in the office at the time. I don't believe anyone else was. I might have seen Fred Stevens when I delivered the boxes because Mr. Stevens is in the back most of the time. Mr. Carroll is the front office man. I had a receipt from the

Republic Box Company. I had signed my own name for the boxes. I did not use the name of any company. I don't know if the receipt which I signed was made out to the Merchants Chemical Company.

[fol. 149] Upon return, I just backed in to the elevator and put them on the elevator. There were twenty-five boxes at a time. As far as I can remember, they were always made out to deliver to the Merchants Chemical Company. I turned the bill over to Don Nelson. Sometimes he was there when I unloaded. Sometimes Fred Stevens was there. I never asked about the Merchants Chemical Company and no one except Don Nelson ever represented the Merchants Chemical Company to me.

The next time I picked up boxes was January 13th, 1937. This was the same procedure. I don't know whether I paid for these boxes at the Merchants Chemical Company but there were times when I did pay for them. Upon those occasions Don Nelson would give me the cash anywhere he would see me. It could have been in the warehouse. On each occasion I would go down, pick up the boxes, pay for them, and bring them and the receipt back. The box company made out the receipts for these purchases. I would sign at the box company for the delivery of the number of boxes called for. I never spoke to Mr. Carroll or Mr. Stevens about the fact that these boxes were consigned to the Merchants Chemical Company.

The next time I picked up boxes was January 18th. It was always twenty-five boxes. It says here, I picked up cartons too. I picked up the boxes first. On the way back I stopped at the carton factory. The cartons were always paid for. I got the cartons from the Acorn Company. I received a delivery ticket with the cartons. They were consigned to Farquhar Manufacturing Company. I knew they were to be taken back to the warehouse because I was given a receipt by Mr. Nelson and told to ask for the boxes under that particular name. I don't remember if anyone else was present when he handed the receipts to me or not. Upon my return to the warehouse on that date, January 17th, 1937, the usual thing happened. I set them on the freight elevator. On occasion I have left them on the freight elevator without seeing Don Nelson. When that occurred, I left them and told Stevens they were there. I would hold the tickets that came with them. I did not leave the tickets because if I did not see Don one day, I would see him in

[fol. 150] the next day or two. When I left them, I said they were for Don Nelson. When Don was not there, I left them on the elevator and would tell Stevens these are for Don with Rug Life. Sometimes if Stevens needed the elevator, he would take them upstairs, though I don't know what he did with them. I left as soon as I unloaded them.

I don't believe I ever told Mr. Carroll or Mr. Stevens that those cartons were coming over in the name of Farquhar Manufacturing Company.

The last date I picked up boxes was January 18th. The next date after that was January 25th. I picked up boxes and cartons. This was done the same way. The boxes were to the Merchants Chemical and cartons to Farquhar Manufacturing Company. I delivered them to the warehouse. I might have turned them over to Don. It was the usual procedure. I would back up, unload them, give the bill to Don if he was there. If not, would leave the boxes with Mr. Stevens and hold the bill. The reason I did not turn the bills over to Stevens was because I got paid at the time I turned over the receipts. The cartons were always paid for in advance. There is no reason why I did not turn those bills over to Mr. Stevens when Nelson was not there.

I think it was \$5.00 I got for picking up boxes from the Republic Box Company. When I picked up boxes and cartons, I think it was \$6.50 or \$6.00.

The next pick-up was February 19th, when I picked up twenty-five boxes from the Republic Box Company and cartons from Acorn. The number of cartons varied from 150 to 200. I do not recall that on this date there was any different procedure.

The next time I picked up cartons or boxes was March 1st. I picked up banding iron on that day too. I looked up the name of a company in the telephone book, called up and asked for a particular type of banding wire. I asked the price, went over and got it. I don't know where I made the call from. Maybe in the Empire. I am not sure where I looked up the company. Anywhere I could get a book. I am not sure that I used the telephone in the Empire Warehouse. The boxes I picked up at the Republic [fol. 151] Box Company were wooden boxes something like Government's Exhibit 73. They were all empty boxes that I picked up. They were the same boxes that I later took over to Roadway except that then, they were filled. There were no markings on the boxes I brought from the

Republic Box Company. The cartons I picked up were open. They were not assembled, just corrugated paper boxes. The bundle was about two feet square, 20 or 25 in a bundle. They were flat. They were cartons such as would be folded to make a paper box out of them. I do not know what size box could be made out of them. I never saw them folded up.

In connection with the banding wire, I looked in the telephone book, saw a company just about a half mile from where we delivered the Roadway Express boxes. I do not know the name of the company. Just found that I could get the particular type of banding wire. Mr. Nelson was with me when I did this. I do not know if anyone else was present or not. Nelson asked me if I knew such a company. I said I did not but we could look it up in the book. It was a certain gauge and size of wire. Don did not talk over the phone. I imagine, however, he was next to me. I only knew that the wire was to be used to be wrapped around the boxes. I had seen it on the other boxes. I do not recall Don telling me that he was in the business of packing and sealing those boxes I brought for him. I knew the type of banding through his instructions. I explained over the telephone the type needed and the purpose for which I wanted it. I imagine Don Nelson was listening and giving me instructions as he heard my conversation. I don't remember if anyone else was there.

I imagine the telephone might have been in the back end of the Empire Warehouse. There is a telephone in the packing department. That is where they made out the bills. I imagine we had to get the warehouse operator. It was an extension phone. The Empire Warehouse operator gave me a wire to the central exchange and I then asked for the number. I got to use the telephone in the back of the warehouse because I had been there about 500 times. I asked Fred to use the phone, or whoever was there. I [fol. 152] imagine Mr. Stevens was there though I am not positive. I had used the phone in the back of the warehouse other times. I did not have standing permission to use it. Sometimes I used the front office phone, asking Mr. Carroll. Sometimes I used the back telephone and asked Mr. Stevens. I had another account in that building. That is how I was there so much. Either Mr. Carroll or Mr. Stevens had authority to give me permission to use the telephone. During that period I never obtained permission from any

other person to use the telephone in the warehouse. I am not positive that I saw Mr. Carroll in the warehouse on the day I ordered the banding wire. He was there every day. He was usually in the front office when I saw him. Mr. Stevens was usually in the rear where the telephone was. That is the shipping department where he works. I don't remember if I told the warehouse people that I wanted to use the telephone that particular day.

I did not give the company I talked to about the banding wire any name. I just said I would call for it in twenty minutes. I went alone. I imagine it was about the 1400 or 1600 block on 39th street. It was about a twenty minute run. Don Nelson did not go with me. Upon arrival, I parked the car in front, walked in the office and told them I wanted to buy some banding wire. I was referred to a man in the shop. There were a lot of machines. They were making wire I guess. I told him I was the man that called up a few minutes ago and I wanted to get the wire. He asked me to wait a few minutes as it was not yet packed. They packed it, I paid him, got a receipt, and went on. I do not know what was put on the receipt. I did not give any name as purchaser since it was a cash receipt. I think I paid \$6.00 or \$7.00. It was Don's money, not mine. He gave me enough to pay for this and the boxes. I may have had some money left. I turned it over with my receipt. I never received anything from Don Nelson other than my regular charge for pick-ups. I could not tell you how much banding wire I got that day. There is some banding wire in the courtroom. Exhibit 70 is the type of wire I mean. The type I bought for Don Nelson is similar to that though it might be a different size. It was a solid roll of wire, [fol. 153] wound together, about 20 inches or a foot in diameter. I took the wire back to the warehouse and turned it over to Don Nelson. This was on March 1st, 1937.

The next date was March 8th. As to that, I recall the same feature as I do with all boxes. It was a \$6.00 item.

As to the next date, I picked up boxes or cartons. I have here an item March 23rd. It says boxes, etc., \$12.00. I don't know.

The next date is April 8th. I did not pick up boxes since April 5th. On that date I picked up twenty-five boxes from the Republic Box Company. Up to that time, the boxes had always been in the name of the Merchants Chemical

Company. There was nothing unusual about this pick-up. The procedure was the same.

On April 8th, I picked up just cartons from the Acorn Company. I do not recall anything particular about that.

April 9th, the next date; I picked up a box. I don't recall anything particular about it. The same procedure the next day.

The next date was April 21st. There is nothing particular about that which varied from the other procedure. The same is true of April 27th, 1937.

That is all there was. I am positive I never took any of those farther than the freight elevator when I took the empty boxes and cartons to the warehouse.

During this time, that is, from November, 1936 until the last date in April, 1937, the Empire Warehouse did maintain a delivery and pick-up service for its tenants. I saw their trucks in operation. I have four entries on my records prior to the first one I made for Don Nelson which went into or out of the Empire Warehouse. One is dated July 3rd, 1936. I do not know the man I hauled for that date: I just got a call to come to the warehouse, asked me if I wanted to do a job. I imagine it was Mr. Stevens who called. It was either Mr. Stevens or Nelson. He asked me if I wanted to make a delivery tonight. I said yes. I drove over to the warehouse and there were a couple of other persons on the loading platform. He just told me to back my truck in there, he put the boxes on it. The [fol. 154] boxes were similar to that and full. They were labeled but I don't remember what the labels were. There was stenciling of the same type as on the boxes I hauled for Don Nelson. I know there were two gentlemen in the warehouse at that time. They had a car outside. There were two gentlemen in there while I was loading. I did not notice the kind of car it was. I put the boxes on and they said they would meet me at the Roadway. I did not learn at any time who those two men were. I do not see anyone in the courtroom at the present time that look like them. I have not seen anyone in the courtroom that I recognize as being either of those two men. I have been here since the beginning of this trial. I have been in the courtroom all of the time.

These two men told me to take it to the Roadway Transit dock. I think there were five boxes on that delivery.

Q. And just tell us what happened in connection with that delivery, that you recollect.

A. I got a call and he asked me if I wanted a job and I said yes and I immediately drove over there and backed my truck in and they put the boxes on; they were on the platform at the time and they put them on my truck. And I drove over to—these people told me that they would meet me over at the Roadway.

Mr. Cavanagh: I am going to object to this line and ask that the answer be stricken unless there is an identification as to who these people are he is referring to.

The Court: Objection overruled.

Mr. Cavanagh: Exception.

Mr. Frederick: Objection for Defendant Braverman and exception.

Mr. May: Exception for Klein and Frank.

I unloaded the boxes at the Roadway. The men were parked across the street. They paid me \$5.00. I did not pay the freight nor make out the bill of lading. These two gentlemen handed me the bill of lading. I do not recollect seeing Fred Stevens when I went to the warehouse that time but I imagine he was there. When I drove in, these two fellows told me what to do. I don't recall whether Mr. Stevens or Mr. Carroll was there. The door [fol. 155] was open and I backed right in. I went to the back of the warehouse where is the part Mr. Stevens had charge of. I first saw the bill of lading after I put the boxes on the truck and when I was getting in my seat. The car these two men had was outside because there was other trucks in there than mine. I don't think the boxes were on the freight elevator. I think they were on the platform.

The next item my records show was July 11th. These particular four deliveries, I don't know how they came about. I never saw the same people twice in the four deliveries. I got my call for the second one on the telephone. I could not say that I recognized the voice. On the second trip I either went in the office and told them to open up the door, or the door was open and I backed in. The boxes were on the platform. I had to have a bill of lading. I am not positive that Fred Stevens was around. I don't remember how many men were there when I picked up the boxes. I could not say if there was more than one. I never picked up any boxes when there was not somebody

on the loading dock. These particular parties came over or drove with me after I made the delivery, to receive the bills. I didn't recognize them as the same two people unless I forgot. I could not say how many different people I saw on these four deliveries. Each time I picked them up, the boxes were on the platform. It was between 4:30 and 5 in the afternoon.

A. No. There is a possible chance that these four deliveries were consigned to—

Mr. May: I object to "possible chance."

The Court: Yes.

Mr. May: I will further object to that as having no probative value, not being shown to have any connection with these defendants now on trial. The persons he received them from are not identified.

The Court: Objection overruled.

Mr. May: Exception.

Mr. Fischer: The same exception as to Defendants Barrett and Stevens.

Mr. Frederick: Same objection as to Defendants Berman and—

[fol. 156] The four items are on July 3rd, July 11th, July 22nd, and July 23rd. There is quite a ways apart. It is pretty hard to remember. I didn't do anything for five or six months later so it is pretty hard to recognize those particular people. I know there was always somebody there to take the bill of lading from me after delivery and to pay me. I don't know whether they followed me over to the Roadway but they were there when I was through. I would get the boxes at the warehouse, the party would hand me the bill of lading already made out. I would go to the Roadway, unload the boxes, get my bills receipted, and as I pulled out there would be somebody there to get the receipt from me and give me money for cartage. I never received a check for my services. I don't know the names of any of these men. It would be the same man who waited outside the Roadway to pay me as the one who gave me the boxes. I think the people varied from one day to the next. I can't recognize any of them. I have not seen any of the people that I saw on those four shipments in the courtroom during the trial.

I had been in the warehouse about 200 times. I had an open account there and access to it because I was doing

their cartage. If I wanted something on one of the floors where the stuff was stored, I would go and tell Mr. Carroll that I was going upstairs, go in and open the door myself, back in and get the stuff. Or Mr. Carroll would take me upstairs. After I would do my business up there, I would ring the bell and go down, or answer the freight elevator, load it up and go out. My regular account was on the sixth and seventh floors of the warehouse. I did not have a regular account on the fifth floor. I hauled merchandise in and out of my regular account. It happened to be a museum. When I wanted to take merchandise out of the museum I just drove in, told them I was going up to get it; told them what I got, and walked out. I had to tell somebody what I took out because if anything was lost, they would have to make an amount of it. I told Mr. Stevens or Mr. Carroll when I took merchandise out.

That covers my hauling services for persons in the warehouse for the years 1936 and 1937. That's all I did. All for Don Nelson that I know of, the four deliveries. The [fol. 157] paper I have referred to is my own record of the haulings.

(Government's Exhibit 106 introduced in evidence.)

Cross-examination.

By Mr. Cavanagh:

I have been in the trucking business twenty years. I have one truck, pads and dollies. I operated the truck and occasionally employed outside help. I did not employ any outside help for this account. I can't say definitely who called me on July 3rd, 1936. There is nothing in the memorandum which would refreshen my recollection. I think I would know if that phone call came from anybody in the Empire Warehouse. I don't think it possible that some outsider called me and told me to go over there, though it is possible. I had been called over to the Empire Warehouse upon innumerable occasions before July, 3rd, 1936. I do not know how many times because a period of twenty years is a lot of time.

Prior to July 3rd, 1936, I had transported boxes of the type here exhibited. I am a general cartage man and as such take any kind of a job offered. The open account I

had at the Empire Warehouse was Museum of Science and Industry. It was on the sixth and seventh floors, held under open storage. There was no difference in the storage of the Museum of Science and Industry. It was not checked in and out. I was not required to receipt for any merchandise I brought in or took out on that account. I have not had any other accounts at the Empire Warehouse during the time I have been in business. I have done hauling in and out all the time. That is, bring a customer in and take a customer out. By that I mean, furniture, baggage or anything to be stored. If a customer wants storage, I take them to the Empire, or any storage I wish. I do not know how many occasions I transported wooden boxes to or from the Empire Warehouse prior to July 3rd, 1936. It is hard to say because my business is so different. There was nothing unusual about these cases. There was nothing which aroused my [fol. 158] suspicion or attracted my attention. I don't think I saw Mr. Barrett there in the Empire Warehouse during this period of time. I did not know what the boxes contained. Don Nelson told me it was Rug Life, rug cleaning fluid. The only conversation I had with Don Nelson relative to the rug cleaning fluid was that I tried to buy some after I had know him well. I told him I would like to get some cleaning fluid to clean some rugs at home. He said he didn't have any at this time.

I would say I made out bills of lading for Mr. Nelson about four or five times. I saw Fred Stevens make out bills of lading occasionally. I also saw Fred Stevens make out bills of lading for other people. Over the period of years, I was at the Empire Warehouse on Lake Park avenue, a lot of times. I saw Fred Stevens do packing over there. I saw him make out bills of lading for people other than Don Nelson. I also saw him marking cases and crating. I saw him do this many times. As many times as I walked in there he would be crating or packing or marking different kinds of work. Fred Stevens' duties were the warehouse man's usual duties. That is, to receive all loads, check it in, take it upstairs in the storage space it is supposed to be stacked, to cover it, if necessary, moth proof it, if necessary; wrap up furniture that needs to be wrapped. If it has to be crated to go out, he has to crate it and mark it for shipment, make out bills; help load it on the truck. Things like that.

He always ran the elevator. I never operated the elevator. It is against insurance rules. Outside of Mr. Carroll, I never saw anyone other than Fred Stevens operate the elevator. I never saw anyone not connected with the Empire Warehouse running the elevator. Prior to July 3rd, 1936, Mr. Stevens called me on other jobs. I do not know just how frequently. Sometimes I did not have a truck available. They would give me a job once in a while that had to be done immediately. If they couldn't get a truck, they would ask me if I was at leisure.

I do not belong to any unions in Chicago. I own my own equipment. The Empire Warehouse employed union help. I take it the union working hours are eight to five; [fol. 159] and a lunch hour. After five o'clock, it is time and a half, and sometimes double over certain hours.

Fred Stevens never talked to me about what was in those boxes. He never said or indicated that he knew what the boxes contained. As to the rate, the general charge in any run for 150 pounds or over is figured on \$1.00 an article. If a person wants a trunk delivered, they generally charge \$1.00. If they can pay \$5.00, they pay \$5.00. If they feel they want a little off, we can do it.

When I went to get the empty boxes, Mr. Nelson would give me a ticket if he paid for it. I would present it to the shipping clerk at the box company, pick up the boxes and return them to the warehouse. I turned the tickets over to Don Nelson. I never turned any of these tickets over to Fred Stevens.

When I testified on direct examination that I held some of the tickets to get my money, I meant if Nelson was not there, I would keep the ticket. I would not turn it over to anybody because I would collect for my cartage fee as I turned the ticket over. When I referred to money, I meant cartage due me. Fred Stevens never paid me for any of this work. In the course of my business there, people have requested me to make purchases for them lots of times. I do not know how frequent. There was nothing unusual about the arrangements I had with Mr. Nelson in this deal. The same requests were made of me lots of times by different persons.

I never told Mr. Carroll or Mr. Stevens to whom the boxes or cartons were consigned. I never told Mr. Carroll or Mr. Stevens that the cartons were from the Farquhar Manufacturing Company. When I delivered them, I went

in and merely said they are for the Rug Life, or for Don Nelson. The names on the ticket do not mean anything in our business. Where you can buy wholesale from a party, maybe a name of a company, but you can go and ask for a different name, a party for a different name; so that comes up often. I have been directed by a person to go and get deliveries in another name many times.

I recall using the Empire Warehouse telephone and calling for this band iron. I think I called from the Empire [fol. 160] Warehouse. Don Nelson was present at the time. There was nothing to indicate the purpose these band irons were to be used for. That is common in our business. People ask us to get boxes, barrels or excelsior for them. It is completely left up to us in our business. We look up a place where we can buy it at the cost the party wishes to pay, call up, get it; either by giving cash and make it out in my name or any way I can get it.

The total I collected for my work for Rug Life or Don Nelson was \$356.00. That money all represents cartage. There are no advances in there for purchases. I never advanced moneys for Rug Life, Inc., or Don Nelson, nor to my knowledge to Fred Stevens.

The practice at the Roadway Transit was for me to pull my truck in, deliver freight to the platform. One of their clerks examine it. That is, check it over to determine the number of boxes, and then looks the bill over, stamps it "received" and returns the bill to me. I know they have a pick-up and delivery but it is not very efficient because you cannot get immediate service. It takes maybe a day or one and a half days to get service. You have to have it ready when they come and things of that sort. I have never done any work for the Roadway Trucking Company in picking up and delivering.

During the times I have been in the warehouse on Lake Park avenue, I have seen passenger cars there. It is hard for me to say just how many passenger cars I saw during the year 1936 because maybe I would go there once or twice a week, maybe once in every two weeks and there might be one, maybe there would not be any for two or three weeks. I was not there every day. It was not unusual for touring cars to be at the dock. I drove mine in several times to make deliveries. One time I saw a man drive in with some furs. In that particular case, it was a coupe, two passenger car. Mr. Carroll was in the

front and Mr. Stevens was in the rear. There was a lot of equipment around Mr. Stevens, such as tables, motor driven saw, lumber, packing materials, stencil machine; all warehouse equipment that you ordinarily see. I saw Mr. Stevens make boxes. The lumber was always there. I [fol. 161] have seen band iron around there other than that I purchased for Mr. Nelson. I imagine Mr. Stevens had to have some on hand.

I have known Mr. Stevens and Mr. Barrett for ten years or more. I know their general reputation in the community up there.

Q. What is it?

Mr. Hopping: Well, your Honor, I object to the question in that form.

The Court: Objection sustained.

I have known Mr. Stevens possibly ten years. During that time I might see him once a week, and then it might go three months. During the time I had the museum account, I would see him quite often. As to Mr. Stevens' reputation for truth and veracity in the community, I never heard anything to the contrary. I have heard of and known Mr. Barrett a long time but we have never been intimate in any way. As long as I have known him, I have never seen him at the Lake Park avenue warehouse, but occasionally I have gone to the main office where I saw him to talk about jobs.

I am familiar with the prices the Empire Warehouse charged for services like that which I performed for Don Nelson.

I did testify on direct examination that on the bills of lading I made out, I put down rug cleaning fluid as to the type of merchandise being shipped. Mr. Stevens never told me what to insert in those bills of lading or shipping bills. Mr. Nelson did. With reference to the shipping tickets or receipts from the box company, consigned to the Merchants Chemical Company, I do not recall whether the address 5041 Lake Park avenue appears on the shipments.

In looking at Government's Exhibits 74 to 88, with reference to refreshing my recollections as to the address of the Merchants Chemical Company, I would say I never noticed the address or never paid any attention to it. Some of these exhibits are photostatic copies of the origi-

nals to which I made reference. These are the originals with my name on them. None of the exhibits upon [fol. 162] which my name appears have the address 5041 Lake Park avenue. On them, the address 3807 Fillmore street, Chicago, Illinois, appears. At no time did I turn any of these in to Mr. Stevens or Mr. Carroll.

During the time from November, 1936 until the last date in April, 1937, the Empire Warehouse had equipment of their own. I do not know how much, but I knew at one time they had forty-seven units. They had large vans. One and one-half ton truck for small pick-ups. Most of their equipment was vans. They were engaged in the moving business.

Cross-examination.

By Mr. Frederick:

I have been an expressman twenty years. I do not know the defendant, Harry Braverman. I never have had any business relations with anyone by the name of Harry Braverman. I never did any hauling for anyone by the name of Harry Braverman. I never did any hauling for this defendant under any other name.

Cross-examination:

By Mr. May:

Prior to coming to court, I never saw the defendants, Klein and Frank before. I do not know them.

Redirect examination.

By Mr. Hopping:

Q. Mr. Pacente, referring back to the question which Mr. Cavanagh asked you to recall from yesterday, in which he read you your answer to the question as to what entries you put in the bills of lading, I will read again—"Question: What did you put in as the type of merchandise being shipped? Answer: Rug cleaning fluid. Question: Rug cleaning fluid, did someone tell you to put that in there? Answer: Yes, sir. Question: Who? Answer: Mr. Stevens or Mr. Nelson." Yesterday, when [fol. 163] you answered that question, was that your recollection as to who told you that?

A. Well, I made a mistake when I mentioned Mr. Stevens, because he never did.

My mistake in mentioning Mr. Stevens occurred to me after I had made it. It occurred to me just now that you read it. I did not talk with anyone about that after court yesterday. I did not talk with anyone since yesterday relative to the mistake I made in that regard. I did not talk to Mr. Cavanagh about that. I talked to him just what we were generally in court. The first time I heard about my making a mistake yesterday in mentioning Mr. Stevens is now when he mentioned it and you mentioned it. I am sure Mr. Stevens did not tell me to put some names or type of merchandise in those bills. I became sure now that you recall the question. I know he never did.

I have known Mr. Stevens for around ten years. I met him in different warehouses before knowing him at 5041 Lake Park avenue. I have just known him through business, some other Empire Warehouse or the Auction. I only have associated with him when I was doing business with him in the warehouse.

I came to Detroit in the same automobile with Mr. Stevens and Mr. Carroll. I came to Detroit in December when we came up to the grand jury, by automobile. At that time, Mr. Carroll and Mr. Stevens were with me. I am staying at a hotel here in Detroit.

Q. Is Mr. Stevens staying at the same hotel?

Mr. Cavanagh: Now, if the Court please, I object to this line of questioning. This is counsel's—or the Government's witness.

The Court: Objection overruled.

Mr. Cavanagh: There is no hostility shown here at this time.

The Court: This witness changed his testimony on a point you brought out this morning.

Mr. Cavanagh: I submit—

The Court: The Government has a right to make some inquiry as to some reason for changing of the testimony. The objection is overruled.

[fol. 164] Mr. Cavanagh: Your Honor, for the purpose of the record, may I submit, yesterday, when this witness testified that he referred over here and pointed over here to Mr. Dracka.

The Court: I don't know anything about that. You can't state that upon the record.

Mr. Cavanagh: Your Honor, please, for the purpose of the record.

The Court: Just a moment. I have overruled your objection.

Mr. Cavanagh: Exception.

The Court: Read the last question.

(The question was read by the reporter.)

The Court: Answer the question.

A. Yes, sir.

I saw Mr. Stevens at the hotel last night. He did not say anything to me regarding my testimony of yesterday. I talked to him about a number of things. It was not something we said which suggested to me that I had made a mistake in mentioning Mr. Stevens' name. At the hotel last night, besides Mr. Stevens, I also saw Mr. Carroll, Mr. Barrett, Mr. Fischer. I talked to Mr. Carroll in Mr. Stevens' presence. He said nothing to me about my testimony. We came over in my automobile. I invited Mr. Stevens and Mr. Carroll to come with me. When we came before the grand jury, we came in Mr. Stevens' car. He invited me.

I would say that I have seen Mr. Stevens daily over a considerable period of time on business. I have gone to the restaurant and eaten with him. I never visited him in any other place outside the warehouse. I never have eaten at the restaurant with Mr. Carroll, except while we are in Detroit. I know Mr. Carroll as well as I do Mr. Stevens. I have associated in business with him for twenty years and am always in contact. I know Mr. Barrett but I have never been around him or associated in business with him as I have with Mr. Carroll and Mr. Stevens. My acquaintance with Mr. Stevens has not been intimate. Just business. I got better acquainted with him while doing work for Mr. Nelson and the museum, because I was in close [fol. 165] contact. He helped me. Ran the elevator. I helped him when I brought in deals. I became better acquainted with him after I started to work for Don Nelson, by seeing him in there and talking to him. At times I talked with Stevens and Nelson together. We talked about everything in general; perhaps loading the truck. We would

just talk a few minutes while loading the truck or while one of us would be making out a bill of lading. I don't remember that we ever talked about whether business was good for the Rug Life Company or not. I don't remember that Mr. Stevens was present when I tried to buy some of the rug cleaning fluid, though I told him about it. When I told him, he did not say anything. He laughed. I told him that just lately. How ignorant I was of the fact that this was alcohol. I never told him that I tried to buy it before I knew what this was all about. It was just lately. I do not know just when it was I tried to buy the rug cleaning fluid. I imagine it was a month or two after I started working for them. I did not know how much I wanted to buy. I did not know how much it would take. I asked if the stuff was any good and he said it was all right. When I asked if I could get some, he said, "I haven't got any at present." At that time I imagine I was over there loading some boxes that had "Rug Life" on them. They were shipping them out nearly every day. I do not know if I went over the next day to get some more or not. I imagine I went over the day after that. I did not again ask about buying any. I did have some rugs to clean but I didn't pay any attention any more. I did not ask where I could buy it and I did not know any place where it was sold. I never saw a salesman for Rug Life as long as I knew Don Nelson. I never saw an office for Rug Life, nor a bookkeeper. The only thing that represented Rug Life to me was Don Nelson and these boxes. I never mentioned that fact to Mr. Stevens or Mr. Carroll. I imagine it was in Mr. Stevens' office in Chicago that I told him about trying to buy some of it. It was after the investigator talked to me about this, because I was surprised. When the investigator talked to me, I mentioned the fact that I had even tried to buy some. Mr. Stevens laughed at the time. [fol. 166] As to why Mr. Stevens laughed was because he knew the same time I did, that is, after the investigator talked to us, what it had turned out to be.

My signature does not appear on some of exhibits, 74 through 88. It is on one dated November 30th, 1936. That is my writing under my name. Also the one dated December 12th, 1936. It looks as if I wrote the whole thing. "Merchants Chemical Company, Charles Pacente." That is a routine thing. We signed the name of the com-

pany we are getting the stuff for and ours underneath. That ticket is made out to Merchants Chemical Company, 3807 Fillmore street, Chicago. I picked up for that company. That is a shipment I picked up for Don Nelson. I did not go to 3807 Fillmore street with it. I do not know if there is a Merchants Chemical Company at that address. The Merchants Chemical Company I was representing was Don Nelson at the Empire Warehouse. That is true of each of the others.

The next one which is dated December 31st, 1936, does not look like my writing but my name does. I do not know who wrote "Merchants Chemical" on it. It does not look like my writing. I do not remember that I ever got anyone else to sign "Merchants Chemical" on them. I am now referring to Exhibit 85. The one before is on Exhibit 86. The words "Merchants Chemical" on Exhibit 86 does not look like my writing. No one ever went with me to Republic Box Company to pick these boxes up, nor did anyone ever meet me there. I always went over alone, picked them up and returned with them. I receipted for them when I brought them back. That is my signature on there.

As to the one dated January 13th, 1937, my record indicated I picked it up but my signature is not on this document. The signature that there appears is D. Nelson. Neither Don Nelson or anyone else went with me on that day. I do not know who wrote D. Nelson on there. I took the boxes back to Don Nelson at the Empire Warehouse. I did not see Don Nelson sign for that anywhere. I do not know how "D. Nelson" got on there. According to my [fol. 167] record I picked up the shipment indicated on the Republic Box delivery ticket dated January 18th, 1937. I went alone on that date. My signature doesn't appear on there. I took that shipment of boxes to Don Nelson at the Empire Warehouse.

The next one is dated January 25th, 1937. I picked up that shipment of boxes and took it back to Don Nelson. I did not sign for the boxes. The name "Bob" is on here but I do not know who that is. My signature does not appear on the delivery ticket dated February 13th, 1937. I did pick up a shipment on that date but did not sign for it. I took the shipment to Don Nelson at the Empire Warehouse. No one was with me that date or on

any of these occasions. Neither when I delivered boxes full or empty or when I picked them up.

My signature does not appear on the one dated March 1st, 1937, March 8th, 1937 nor March 12th, 1937.

As I recall now, I think Bob was shipping clerk at the Republic Company.

The one dated March 12th, referring to twenty-five, six 5-gallon cans in cartons, C. O. D., \$26.00, paid, Republic Box Company, signed, "Bob," was either on there when I picked up the boxes or an entry similar to it. I did pay for C. O. D. pick-ups of boxes, on which occasions I took the money from Don Nelson over to the box company, paid it, and took the boxes back to Nelson.

My records do not show whether this particular one is one of the transactions I did in that manner or not. My records only indicate a delivery to Roadway on March 12th. I do not know from my records whether I picked up that shipment or not.

I know I picked up the one dated April 5th, 1937 which shows \$31.25, paid. I did not sign for it. I did sign for the one dated April 8th, 1937 and my records show that pick-up.

On August 21st, 1937 I picked up boxes but did not sign for them. The same is true of April 27th, 1937.

I made my original records at the time I made the pick-ups and I, myself, made the record I have here testified from. My original records are five daily books. In the [fol. 168] original book it does show a pick-up, March 12th, 1937 at the Republic Box Company. In my other record, which is Exhibit 106, I got Roadway boxes for March 12th. I must have made a mistake on this. After making out Exhibit 106, I did check back against my original records. It was accurate as far as I could check. That is the only mistake I know of that I made in transcribing. You and I both checked this mistake. Exhibit 106 is correct with that exception of March 12th, 1937, and shows I picked up each of the shipments represented by Government's Exhibits 74 to 88. Sometimes I signed for them and sometimes I did not. If I was to pay C. O. D., I would pay the money and get a receipt. If it was not I perhaps did not bother about a receipt or else sometimes I would go in the office and they would tell me to back my truck to a certain door and load the boxes. I do not know if I got a

receipt every time or not. I had to receipt for the delivery on their records, though sometimes, I did not get a duplicate.

All the cartons picked up by me at the Acorn Corrugated Box Company were delivered in the name of Farquhar Manufacturing Company, I believe. I don't remember ever seeing a street address for the Farquhar Manufacturing Company. I don't remember if they gave a street address. I don't remember if I ever saw any address in connection with that company. That was not unusual in my business for one man to buy under one company name at 3807 Fillmore street, and cartons under another name with no address, and pick them up in the way I did. It is common practice. As to giving another instance of that, if I went down to the Merchandise Mart for something, my customer might be Mr. John or Mr. Bloom, and I would pick it up under a firm name. I do not do most of my business out of the Empire Warehouse, though I have done considerable business there. I don't think any other tenant of the warehouse had me pick up materials in company names like that. I would not say that this made it unusual. I never paid much attention to the two company names Don Nelson was using. I do not think it was unusual at the time. Though the boxes were shipped out in [fol. 169] a third company name, that is, Rug Life, Inc., did not cause me to think it unusual. I imagine it is one of the duties of a warehouse man to see that nothing goes out of the warehouse without knowing it and checking it out. It is one of the duties of the warehouse man to know what is going in and out. He has to let it in and out. Mr. Stevens was the warehouse man for this unit. It would be unusual for an express man to take merchandise out without the warehouse checking it. Mr. Stevens was present on nearly every occasion I took these boxes out. The warehouse man also has to know what is going in. I think Mr. Stevens checked in these boxes that were in the name of Merchants Chemical Company and the cartons in the name of Farquhar Manufacturing Company. He checked out the billed boxes in the name of Rug Life. Don Nelson represented all three companies at that time. I didn't think it unusual at the time.

Re-cross Examination.

By Mr. Cavanagh:

Yesterday when Mr. Hopping was examining me with reference to making up the waybills, and as to who directed me to make them out, I pointed to Don Nelson. I did not mention the name of Stevens unless it was through error. I have not changed my testimony as to that incident. My testimony is here the same as it was before the grand jury. I talked with Mr. Hopping since yesterday and went over some of the exhibits. I did not talk to Mr. Hinton.

As to one person representing more than one firm, I did not pay much attention because when a man comes and hires me, I don't go into details about who orders it and where he buys it. When I am asked to haul something, I get an address, pick it up and that's all. I am interested in the carting end of it.

It was shortly after I got acquainted with Mr. Nelson that I tried to buy some, but it was after we found out that we were implicated in the case that I told Mr. Stevens of it. At that time, both Mr. Stevens and I laughed because I thought it was funny.

[fol. 170] While it is the duty of the warehouse man to see what goes in and out, it is not his duty to open boxes. They have never opened anything I brought in. When I made the statement it is the duty of a warehouse man to check what is going in and out, I meant check what is before his eyes. Whether it is a box or a chair. Not that he would go into the contents of the box. Fred Stevens never mentioned to me that he knew the contents of these boxes.

When I delivered these boxes to the Empire Warehouse which were consigned to the Merchants Chemical Company, I placed them on the platform or elevator. I never used any of the company names. I always mentioned Don Nelson. All the negotiations and direct business was done for Don Nelson. I was not interested in the other names at all.

Merchandise I took in and out for the Museum of Science and Industry was in open storage. It was not checked in and out because I was responsible for it. It was in open storage. There were never any receipts taken or given for that merchandise. I have been on the fifth floor of the

Empire Warehouse. There is nothing unusual about it. Some floors had vaults; other floors were open storage.

Redirect examination.

By Mr. Hopping:

Upon delivery, the warehouse man merely checks the number of boxes. We do not necessarily show him the bills. He is interested in who the boxes are consigned to. I was allowed to take merchandise in and out for the museum account. That was because of an understanding between myself, the museum and the warehouse. I had access to those floors any time I was asked to go in there. I did not have a similar understanding as to Don Nelson. If I brought any boxes for Don Nelson, I would tell Mr. Stevens the number of boxes. I did not show him the bills that came in the name of Merchants Chemical. I did not conceal that from him because the boxes showed it. The boxes did not show they were in the name of Merchants Chemical unless I showed him the bills. I am positive I [fol. 171] never let Mr. Stevens see one of these bills. The reason was I had to turn the bills over to Don Nelson to get paid. Though I knew Fred Stevens' interest as a warehouse man, and though he was a friend of mine, I never told him they were in the name of Merchants Chemical.

I guess I did answer your question as to whether I ever told him by saying, "I don't remember."

(At this time, Mr. May again requested the court to rule upon demand made for production of original statements taken from the Government witnesses Skampo and Dracka. The jury was excused. As authority in support of the demand, the case of *People v. Dellabonda*, 265 Michigan 486, was cited, as was the case of *People v. Heppner*, 285 Michigan 637.)

The Court: That case isn't here, of course.

Mr. May: I just point out this case, if the Court please, because it cites the Dellabonda case, and goes on to cite practically the same set of facts we have in this case.

The Court: You have got a different case here.

Mr. May: These people gave an original statement. I have never seen the statement. I don't know whether it

conflicts with the statement given on the stand, but I believe it does.

The Court: You are suspicious. You want to find out.

Mr. May: You want to find out.

The Court: If it does, you will introduce it; if it doesn't you won't.

Mr. May: I will introduce it, at any rate.

The Court: Let me hear from the Government.

The District Attorney cited in opposition, the case of United States v. Dilliard, 101 Federal (2) 829.

The Court: Well, let me say this. The Government hasn't rested its case yet. I will take the matter under advisement. I am not satisfied I can't find some Federal cases right in point. I will determine the matter in time—before you go into your defense.

Mr. May: Just one thing I would like to say for the record, that King, the man who took these statements, is now dead. We haven't a right to call him, because he [fol. 172] isn't here. We don't have the right to find out what is in those statements by examining him. Therefore, we demand to see those statements, because he is not available.

Mr. Hopping: In answer to that statement, King was present at the taking of those statements, but there was also another Government officer who is here in court.

The Court: I don't know the state of the record, who took it?

Mr. Hopping: Mr. Herdrick is present here as a witness, and counsel will have the opportunity to examine him.

The Court: All right. Call the jury.

(Thereupon the jury returned to the courtroom.)

GLOSTER, JAMES N., a witness called by and on behalf of the Government, being first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Hopping:

I am a salesman for the Republic Box Company of Chicago, and have been so employed for eighteen years.

The Republic Box Company is located at 925 North Halsted street. My duties with the company are manifold. I do not have anything directly to do with the records of sales of boxes. When the orders are written up, they are held until I come in. I check them over to price them and to see that they are okay in every respect.

The records which I have been shown are records of the Republic Box Company and kept by me or under my supervision. Some of the phrasing that appears on the records is mine. My writing appears on some of them for prices. The purpose of these records is to keep a record of all their orders. They are made in the regular course of business of the Republic Box Company. Also, they are made at the time of the transaction they record. They accurately record these transactions to the best of my knowledge.

[fol. 173] These records cover from March 25th, 1936 to and including April 26th, 1937.

The system of keeping the records is that when a sale is made, five copies are written up on a machine. This states the name of the company, its address, terms of sale, date of sale, method of shipment, description of the article to be shipped, quantity of boxes, size of boxes, thickness of lumber, and details regarding construction and size of parts, and panels to be sawed. From time to time, I make some of the entries. On these, I have written in the price, extended the total charge showing the amount paid on account, the balance due, C.O.D. Also, "no free sawdust on future orders. This lot only." That would indicate I possibly had made some deal with the party for free sawdust.

The exhibit is our office copy. There are entries on these sheets which refer to other records of the Republic Box Company. Our invoice clerks put down the quantity of boxes shipped and the time they were shipped, as well as the shipping receipt number which is our key to our invoice number. The one I am now looking at is invoice No. 895. It is an entry of sixteen boxes to hold six 5-gallon cans in cartons and dated March 26th, 1936. It represents a sale of sixteen boxes to the Merchants Chemical Company, 3807 Fillmore street. It is marked "Will call Thursday A.M., 10:30." We obtained information from the customer as to the size of the items to be shipped, and arrange and design the package. Then write it up

and give it to the clerks to write up on the machine. We design different types of boxes and have to be familiar with that because they are governed by Interstate Commission rules. That is entered on this sheet and sent to the factory. One we keep in the office, together with all details of prices, etc.

All the sheets I have here, refer to orders for boxes in the name of Merchants Chemical Company. Its address is 3807 Fillmore street. On the back of this group of papers is a larger one which is the ledger sheet from the general ledger. That also is made in the regular course of business and at the time of the transaction it records. [fol. 174] However, it is sometimes two or three days before it gets into the general ledger. It is made up in part from the other records. The records you first showed me. It is an accurate record of the transaction.

(Government's Exhibit 127 to 147 were marked.)

Mr. Hopping: These exhibits have been marked 127 to 147, inclusive. There is another group of papers marked for the intervening numbers, which I will come to shortly.

The Court: I assume those papers are what this witness' evidence indicates, sales of this box company to parties under the name of Chemical Company, or whatever you call it.

Mr. Hopping: Yes, your Honor.

The Court: Is there any reason why you and counsel can't get down and look at those and agree upon what they show?

Mr. Fischer: I think we can.

The Court: If you go into detail with those, we won't be through with those by Saturday night, not these, even. During the noon hour, you take those up. Have you any other oral testimony?

Mr. Fischer: We will be glad to.

The Court: Try it anyway. I am assuming they are orders for boxes.

To the best of my knowledge, I personally took the order on the first occasion that boxes were made up for that account. I have a faint recollection of it. As I recall, the party or parties came in with two cans. One can was shorter than the other and it was stated that boxes were wanted for the shorter one. I took the measurements. As I recall, they were going to be put in cartons, so we

were to make a little allowance for the cartons. The box size was arrived at according to this and accepted, and I was paid a total of \$15.00. I was paid \$13.50 on account, with a balance of \$2.18 due when they were picked up. I do not recall that I saw the same person who gave me directions for the size of the boxes after that. I would not know if someone else came to pick them up. I do not [fol. 175] believe I received payment. It was paid at the shipping room, which is on a different floor. I did not see the person who picked them up. To the best of my knowledge, I never again saw the person who came and gave me the description of the boxes and the measurements.

The first order was dated March 25th, 1936. I doubt if I could recognize the person at this time, though if that person was presented to me, I would be glad to try. I do not see any person in the courtroom I recognize as being the man who gave me that order. From that time on, we received orders on this same account and these exhibits record all of these transactions.

Government's Exhibits 74 to 88 are photostats of our shipping receipts. When the orders are made out, each order has an individual number. The details go downstairs, one copy to the shipping room. The order number is in the upper right-hand corner. The number of Exhibit 132 appears on Exhibit 74. The rest follow by number and connect them with these papers. The purpose of records which are Exhibits 74 to 88, are to show that the merchandise was delivered to the customer. The handwriting on those exhibits is that of Bob Thomas, the assistant shipping clerk. The date of shipping, name and address of customer, the order number, description of the contents, fact he carried out his orders, collected the money and his receipt for it, is in his handwriting. That is made in triplicate. The original is kept by the Republic Box Company. The duplicate is the customer's copy. The triplicate goes to the invoice clerk who makes out the invoice from it and gives the date the merchandise is shipped. The three copies are made together. All entries on the original would appear on the rest except possibly the signature of the driver picking it up. If he is on the truck, it is brought by one of the boys for him to sign. Sometimes, however, that is signed on the machine. The name and address of the consignee would be on all three. I do not know where the original of which these photostats

were made are at the present time. I received a subpoena to produce all records. I brought what records we had left. I did make a search for the originals of which Exhibits 74 to 88 are photostats.

[fol. 176] In investigating this case, agents came in. We gave them particular copies which they said they would return to us. They took them to have photostats made. To the best of my knowledge, they did return the copies to us and they were put in our file to be filed in the regular course of business. They never got there and some way or other disappeared. When I searched for them, they were not there, but I have a very good recollection that they were returned.

(Exhibits 74 to 88 were introduced in evidence without objection.)

The entry dated November 30th, 1936 would indicate that the man who gave the order in the first instance, came in. It is in the handwriting of a man who is no longer with us. One entry, which appears in red pencil, is a part of our record. The part, "see that no nails stick inside" is in the handwriting of the salesman who is no longer with us. I do not recall that I had any conversation with anyone regarding that entry. In can boxes, that is one of our standard phrases.

Cross-examination.

By Mr. Fischer:

The name Merchants Chemical Company is very familiar to me. I know of it because we sold them according to these records. We sold all sizes of boxes used by chemical companies. I could not say whether there is anything unusual about the size of the box, Exhibit 73, in its use by chemical companies. When I said I was startled when the cans were brought in, I meant that the smaller one was not a regular size gallon we were used to getting. I thought it was rather an odd business organization and was going to do a little cheating. I could not ask what they were going to do. I don't remember asking the man what business he was in. My prime motive was in getting his order for the boxes.

[fol. 177] Re-direct examination.

By Mr. Hopping:

After the first five orders, I think there was a little gap in the business. Referring to the records, there was quite a gap after the third order, that is from April 30th, 1936 to June 25th. I thought it was January. No, I would not say there was much of a gap. It seems to me they are consistent. I do not recall anything happening in connection with one of these orders which brought to my attention the question of whether or not the Merchants Chemical Company was a big chemical company at that address. When we started to get a gap, it was turned over to a district man. I did not personally check the address. I do not know where the Merchants Chemical Company is located in Chicago. I have lived there thirty-eight years. I do not know the location of any large chemical company in Chicago.

KOSSACK, J. J., a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hopping:

I am office manager of the National Box Company and have been so employed for eleven years. I also have charge of the records. I did receive a subpoena to produce the records of the National Box Company. Government's Exhibits 107 to 125, and a second series with the same numbers followed by the letter "A", as well as Exhibit 126, are all records of the National Box Company kept in the ordinary course of business, under my supervision. They were made at the time of the transactions which they record and are accurate. The group marked Exhibits 107 to 125 are original sales records. 107A to 125A are receipts that are identical to the sales voucher. 126 is a sales ledger sheet of the Fox Picture Frame Company. Entries on Exhibits 107 to [fol. 178] 125 appear on Exhibit 126. That is, on the debit side of the ledger sheet.

I can tell the identity of the boxes made by our company from these records by the factory order number. As a rule, the same factory order number is placed on boxes that are completed and shipped out. If I saw a box made on that order and which had the factory number, I could identify it from the order. The box in the courtroom has our factory number 07768 on it. That is Exhibit 73. That number was written on there in our factory. All of these orders pertain to orders for boxes in the name of Fox Picture Frame Company. I do not know anyone who came to our company in connection with placing those orders. I do not know about the name of the company. I had no personal dealings with the party in question. We never had any occasion to look up the Fox Picture Frame Company. Its address is given as Gary, Indiana. I do not know of any such company there. We had no other customer by that name prior to the first delivery on this account, nor have we had any since.

Mr. Hopping: I offer in evidence Exhibits 107 to 125, 107A through 125A, and 126.

Mr. Frederick: Which is the one that has the name, Fox Picture Frame Company, on it, which of the numbers?

Mr. Hopping: Well, they all have the name "Fox Picture Frame Company," is that right?

A. I believe they are all Fox Picture Frame,—sold to Fox Picture Frame.

Mr. Frederick: And the ledger sheet as well.

The Court: 126.

Mr. Fischer: Will we discuss these the same as the others?

The Court: I think so.

Mr. Frederick: For the purpose of the record, I would like to make an objection, on the grounds there is no materiality shown between the Fox Picture Frame Company, the name that appears there, and the participants involved in the charge here.

Mr. Hopping: I will ask the witness an additional question, your Honor.

[fol. 179] There are no signatures on Exhibits 107 to 125, showing delivery of those boxes. Exhibits 107A to 125A bear signatures showing delivery, to the Empire Warehouse. The last name I cannot make out. The receipts are made at our plant at the time of delivery to the driver. There

is an entry on the left-hand corner showing truck number, Empire Warehouse. They show that they were picked up by the Empire Warehouse dray.

Cross examination.

By Mr. Fischer:

The original order was placed with me. I do not know who gave me the description. A party came in with several frames, took them to our sales department, who called the cost estimator. A certain number of frames were supposed to get into the container. I did not talk to the person that placed the order. I did not see him. There was nothing in the description of the boxes as appearing in our records which would be unusual. Nor was the fact that the boxes were to be used by a picture frame company in Gary of any significance. There was nothing which made me suspicious of the transaction. It was not until the summer of 1939 that I found out there was something illegitimate concerning these transactions.

I have heard of the Empire Warehouse and know it is a large company. They have done several jobs for us. Neither I, nor anyone in our employ knew that these boxes were going to 5041 Lake Park avenue. I have never seen Mr. Stevens or Mr. Barrett before seeing them in court.

Re-direct examination.

By Mr. Hopping:

The entry on the left hand corner of Exhibit 107A, which says "Empire," is made on our autograph register form, at the time the trucking company came in for the boxes. It is in the handwriting of August Miller. All of the blue writing on that exhibit is in the same handwriting. Each [fol. 180] of Exhibits 107A to 125A is in the same handwriting which means the same shipping clerk filled out each of the delivery sheets. On each, where it says either "Empire Warehouse" or "their truck" the arrangement was they were to pick up their boxes.

Re-cross examination.

By Mr. Fischer:

I was not present when the shipping clerk wrote "Empire Warehouse" on here. It was done by August Miller,

who is no longer in our employ. I am out in the shipping room probably every day. I never saw any of these shipments being delivered to anyone. I do not know if there is a Fox Picture Frame Company in Gary. It would not be unusual to have the Empire Warehouse Company pick up boxes for them. Numerous concerns called for boxes at our place, though not boxes of that size. I do know one of the drivers for the Empire Warehouse, but I do not see him in the courtroom. All the exhibits do not bear "Empire Warehouse Company." I don't think I made that statement. The first two or three show the Empire.

Re-direct examination.

By Mr. Hopping:

With respect to the others, beyond the first two or three, there is an entry which says "their truck" or "their" which means the purchaser picked up the boxes.

Re-cross examination.

By Mr. Fischer:

By "their," I mean whoever made the purchase, picked up the boxes. Outside truck companies and individual concerns have their own drays. They send in their own trucks. That is the way we designate them, we say "their." We do not know if the Empire Warehouse Company ever ordered any boxes from us. The calls came in over the phone. The picture frame company did not have any [fol. 181] trucks. I never asked anyone if they were representing a picture frame company. Though the picture frame company had no truck, by "their" I mean they made arrangements to send in a truck. If it was an "Empire" truck and the clerk saw it, he put the name "Empire." If he did not see the truck he just showed "their truck."

I see these documents every day in the course of my work. There is nothing about these which causes me to remember anything or from other entries in our books. There was nothing unusual in the entire transaction. I have no knowledge as to whether the Empire Warehouse picked up any other or similar merchandise at our plant. The fact that the Empire Warehouse might have been hauling from some one in Gary, Indiana, would not put me on notice as being anything unusual. The entry "Empire" or "their" truck

was written before delivery, but after the driver came in to pick up the boxes. Our employee either saw the truck or asked. When he used the word "their" I do not know whose truck it was. It could have been either an Empire or any other truck. If he saw the Empire truck, he would put "Empire," or if he saw Advance in there, he would put "Advance Transportation."

I would recognize the one Empire driver because he came in and paid me money on a certain shipment. Just when I could not say. It is not unusual for a driver to pay for a shipment for someone else. It is done frequently.

I know the Advance Cartage never did any hauling for the Fox Picture Frame. I never saw any of the empty boxes as represented by these exhibits, picked up by anyone.

[fol. 182] **NOFFER, C. ERVIN**, a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hopping:

I am chief of the Records Department of the Bureau of Motor Vehicles of the State of Ohio. I have the official records of our department for the year 1939. They are records of the registration of automobiles in the State of Ohio for that year.

On Government's Exhibit 148, there appears a record of 1939 license No. KY 592. That appears on the license marked registration number. The same is true of Exhibits 149, 150, 150A, 151, 152, 153, 154 and 155. Exhibit 148 also contains the name and address of the person to whom that license number was issued. The owner is given as Rosario Tardino, residence address 10904 Woodland, Cleveland, Ohio.

Exhibit 149 is a record showing license No. KC 453, registered in the name of Leonard Spigutz, 7306 Carnegie, Cleveland, Ohio. On each of the other exhibits, on the same line, is the name and address of the persons to which the automobile is registered.

VOGEL, JOHN L., a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hopping:

I am vice-president of the Signod Steel Strapping Company. We manufacture and place with customers the Signod system of tensional equipment for reinforcement and sealing of cartons, boxes, carloads.

I can identify the tools manufactured and leased by our company. Exhibit 69 is the stretching tool made by our company.

[fol. 183] Government's Exhibit 67 is a sealing tool manufactured by our company. I see nothing else except the contents of Government's Exhibit 72, which are what we call signods or seals. They are used in connection with the tools I have just identified.

From the numbers on these exhibits, I can by reference to a customer's order, tell when and by whom they were obtained. I have a customer's order which identifies the tools mentioned. It shows the identifying number of each of the tools mentioned and the description of the tool. They were obtained on April 16th, 1936 and delivered to Waukegan Chemical Company, 19 South Western avenue, Chicago. The tools are never sold. They are always our property. They are placed with the customer on a lease deposit arrangement. If the tools ever came back into our possession, our records would so show. Our records indicate the tools were still with the same lessee.

I have two other records, one of which pertains to the delivery and one is a copy of the invoice itself. These records represent the history of these tools so far as the records of our company show it. From our records, it does not appear there was ever any contact made with the lessee after delivery. We attempted but were unable to locate them. We wrote several letters, all of which came back, except one. We never received the tools back, nor did we see anyone who had them in their possession, until I saw them either here or at the grand jury.

Cross-examination.

By Mr. Frederick:

We leased these tools. Exhibit 157 is a copy of the original order. It refers to conditions on the reverse side, but unfortunately there is nothing on the reverse side.

Exhibit 158 is a copy of our invoice. It is made from Exhibit 157.

Exhibit 156 is a receipt covering delivery of the merchandise. It also is made up from Exhibit 157.

Exhibit 158 shows the receipt of the individual taking the merchandise. In looking at Exhibit 156, I cannot quite [fol. 184] make out the name of the person who received it. It looks to me as if it might be A. Maxwell or some similar name.

Practically all of our business is transacted through salesmen. It is not more than once a year any equipment is picked up or an original order placed through our office. The salesmen then make an investigation of a person or company that wishes our product. Apparently in this circumstance, the individual came into the office. Our records were examined and it was found that some equipment had been placed with a customer of a similar name before. It is a presumption on my part that the man who accepted the order may have been told that there was some connection with the previous customer. That is the only investigation our company made before letting the tools out. On the original order, the lessee is Waukegan Chemical Supply Company, 19 South Western avenue. On the invoice the address is 19 South Wabash. Apparently, the change was made in error by someone in the office. Our salesmen apparently went to the South Western address. I do not know who placed this order. We were unable to contact anyone with reference to payment following the placing of the order.

Cross-examination.

By Mr. Fischer:

There is no monthly payment on this lease. There is an original deposit of \$10.00 a tool. If the tools are returned after the first quarter, there is a refund made. It is written down according to the length of time until

the final refund of \$2.00 a tool. If the tools had been returned to us in 1939, there would have been a refund of \$2.00 a tool. While I would not go into the legal phase, I would say there was no similarity between this lease and a conditional sale. We never sell any of these tools but have leased them to warehouses. They could very easily have five of these equipments in nearly every warehouse.

[fol. 185] HAGERMANN, JOSEPH, called on behalf of the Government, testified as follows:

Direct examination.

By Mr. Hopping:

I am with the Acorn Corrugated Box Company 2635 South Wabash, Chicago, and have been for ten years. I am production man and head shipping clerk. In that position, I make a delivery ticket. The factory orders are made in the office.

Government's Exhibits 89 to 97, are in my handwriting. We make out three copies of the orders. Keep one on file and the customer signs the second copy. He does not always have to sign a ticket, "Paid in advance." The first copy is the receipt the customer should sign.

The first date shown on this group of exhibits is January 25th, 1937. When a person comes in to pick up boxes, we make out this delivery ticket showing the amount and if it is paid for here, mark it "Paid in advance." If only part is paid, it shows the amount paid, the name of the company, and the date. That delivery was for a company by the name of Farquhar.

The first copy is the office copy which has to be signed. The second sheet is given the customer and the third is a permanent copy for the office. The entries I placed on there are Farquhar Manufacturing Company, and the size of the box 9½ inches, 13⅝ inches. Corrugated boxes of this type can be used for a million and one purposes. At the time I made out this ticket, the Farquhar Manufacturing Company was a new customer. I also marked how many were picked up and the money received. I did not receive money on the first order. He paid the office man. He put this on the delivery ticket. This says, "Paid,

Cole." That was the office man. I wrote this, showing Cole was paid.

Exhibit 90 shows a sale on February 19th, 1937 to Farquhar Manufacturing. He paid me \$10.50. The word "pick-up" on there shows he picked it up himself. If a chauffeur makes a delivery, we put his name on there.

[fol. 186] Exhibit 91 is made out by myself and dated February 26th, 1937; showing 130 cardboard cartons to the Farquhar Manufacturing Company. They paid me \$10.32. When I used the word "he" in stating that the boxes were picked up, I mean the man who came for them. I cannot identify him. Exhibit 91 is the signature of Charles Cepantik. He is the one who paid me and picked up the form.

Exhibit 92 shows 197 boxes picked up March 8th, 1937 and paid to me. There is no signature telling who picked them up that day.

March 12th, 1937, \$14.00 was paid to me. There is no signature showing who picked them up then.

On April 8th, there was \$16.88 paid. The "9" means nine bundles.

On April 21st, 1937 there were nine bundles to the Farquhar Manufacturing Company. Shows paid to Cole, \$20.88. The "14" means the bundle. Cole was our book-keeper.

There is no signature showing who picked them up on May 5th, 1937.

On March 9th, 1938, shows 25 to the Farquhar Manufacturing Company and paid Cole.

I recognize Exhibit 159, which is a bundle of papers as being a continuation of the records of the Acorn Corrugated Box Company, on the same account. I don't know if it is the same account. It is a different name. I identify Exhibit 160 as a part of the records of the Acorn Corrugated Box Company kept in our office. I do not have anything to do with them, but it is the standard form we use.

Exhibit 159 are all in my handwriting, outside of this part. The sheet attached to the page dated July 22, 1938 is in the handwriting of Joseph Tomlinson, an office employee. She probably made out two of them. She kept two of and gave the customer one.

Exhibit 161 is a picture of the man that picked up the boxes mentioned in Exhibit 159. I saw him a few times.

He did not come in and give me a receipt. I didn't know all of them.

[fol. 187] We put our factory number on them before we write our delivery tickets. We put our order through the factory on a different form from the one we have here. We give forty-eight hours service. The man might come two or three days late to pick them up. We have a big elevator at our back door and he may be only third or fourth to be loaded and unloaded. When he could not get the boxes right away, he would come upstairs the back way and ask if he could get them. By him, I mean that man's picture. I never knew his name, only he was from Fox Picture Frame.

On the first page of Exhibit 159, is an entry "258 cartons paid." The next entry represents the initials of our office girl, Miss Evelyn Simpson. There is a marked entry, pick-up and signature which represents a driver's signature when he picked up the shipment. There is a similar entry on each one of these. They were all separate orders. The one on June 22nd, 1938 was paid in advance to Evelyn. One says, "Paid in advance to J. Tomlinson" an office employee. I do not know personally the man who signed these signatures indicating delivery to a driver. Half the men I never saw. If the shipping clerks delivered it to them, I was not present. I saw the man who is pictured in Exhibit 161, three or four times in connection with shipments under the Fox Picture Frame. I could not tell by looking at these shipments which time I saw the man. I could not tell whether it was at the beginning of the series or the end. This man used to come in a car. The only time he came to make the pick-ups for the cartons.

Cross-examination.

By Mr. Fischer:

I do not know Frederick Stevens or James J. Barrett. When the boxes were ordered, the individual did not talk directly to me. He placed the order in our office which was turned over to me. I never had anything to do with Exhibit 160. It is a part of our office work. I recall sometimes giving the receipt which customers signed to a particular individual. I have two or three boys who work on [fol. 188] the shipping platform that deliver that stuff mostly to the customers. I made out the receipt and sometimes

handed it to one of the other employees. Once or twice I gave it to the man in the picture. I do not know when that was.

Cross-examination.

By Mr. May:

I do not know and I never before saw either Harry Klein or the defendant, Frank.

Cross-examination.

By Mr. Frederick:

I do not know Harry Braverman and have never seen him before.

SIMPSON, EVELYN, called on behalf of the Government, testified as follows:

Direct examination.

By Mr. Hopping:

I live in Chicago and have been employed at the Acorn Corrugated Box Company for four and one-half years. I do the estimating and check the orders in the office. I identify Exhibits 89 to 97, inclusive, as records of our company. When the orders represented by these exhibits come in, either personally or over the phone, I make a record of them and put a factory order in to the foreman in the shop.

Government's Exhibit 160 is a record I made in connection with that. This Exhibit 160 was made November, 1936. At that time, someone came in and placed the order for a particular size and gave me an address where the cartons were to be delivered and then for some reason or other, decided the cartons were to be picked up and no delivery was to be made on them. I took the size and quoted the price on this order. There are some entries on Exhibit 160 which represent each delivery thereafter, [fol. 189] on this Farquhar Manufacturing. They do correspond to the tickets numbered Exhibits 89 to 97, in that they are all the same-size cartons. Whoever came in gave me the size on this record, Exhibit 160. I figured a price, gave it

to him and he agreed it was okay. I made out an order and either I collected the money or the foreman was paid when they were picked up. I do not know exactly on each one. However, they were paid for before he received the cartons. I do not see the particular entries on Exhibit 160 for tickets which are Exhibits 89, 90 and 91, but each size and price corresponds with the card. The entries on these, that is, Exhibit 89, and those like it, are made from the card which is Exhibit 160. Exhibit 160 is in my handwriting. Exhibits 89 to 97 are deliveries of the orders which I figured and entered on Exhibit 160. I did not know the man who got those cartons at that time. I saw a man who ordered the same size cartons under another name. I cannot tell from Exhibit 160 when I saw him.

Exhibit 159, which is a group of papers or sales tickets, and have on them the same size cartons, they were not made up from Exhibit 160. That was a separate transaction. The period of time covered by Exhibit 160 is from November 23rd, 1936 to April 26th, 1937. It was later than that when I saw the man who ordered the boxes under the name of the Fox Picture Frame Company. I made a record in connection with the sales to the Fox Picture Frame Company similar to that made for Farquhar. I do not have that record here. I understand they were taken from the office. I looked for them and could not find them.

Exhibit 161 is a picture of the man who originally ordered cartons for the Fox Picture Frame Company. He is the one who paid for the cartons that were delivered on the tickets as shown on Exhibit 159. I never learned his name. He never gave any other name than the Fox Picture Frame Company. During the trial I have not seen anyone who I recognize as having come to the Acorn Corrugated Box Company in connection with any of these deliveries.

[fol. 190] Cross-examination.

By Mr. Fischer:

It was not the same person who ordered the boxes in the first instance as was ordered by the Farquhar Company. I never spoke to a man by the name of Fred Stevens or James J. Barrett. I never spoke to the defendants Stevens and Barrett.

MEYERS, HARRY F., called on behalf of the Government, testified as follows:

Direct examination.

By Mr. Hopping:

I am chief of Rates and Tariffs of the Liberty Highway Company, with offices in Toledo. The Liberty Highway Company is a motor transportation company. While I do not have direct supervision of the records of the company, my department does have some supervision over them.

Government's Exhibit 63 is a part of the records of our company. The first sheet of that exhibit is a delivery receipt which carries the delivery to the consignee. It is signed by the consignee, Mayfair Cleaners, per K. J. R. It also shows the point of origin, shipper, consignee, destination, weight, rate and freight charges. It carries a stamp indicating it was paid. It looks as if it was paid December 21st, though no year appears. The third sheet relates to the shipment on the first sheet. This is called our script sheet or train sheet. It indicates the different types and contents of that unit. There is an "X" covering the shipment in question which I put on there myself at the time of the investigation. The third sheet gives the pro reference. This means progress. We start with a law number and progress. This happens to be No. 53195, freight bill number.

The next indicates the amount of charges. The next column gives the name of the shipper, point of origin, name of consignee, destination, number of packages, weight [fol. 191] and the earnings. Rug Life, Incorporated, is the shipper. Shipment originated in Chicago and the consignee is the Mayfair Cleaners, Toledo, Ohio.

To follow the progress of the shipment, we consult the second or middle copy of the bill of lading set. The bill of lading sets consists of an original, shipping order and memorandum. The original and memorandums are retained by the shipper. The shipping order is the carrier's instructions as to destination and consignee. First the shipment is delivered, and the shipping order, bill of lading is signed. We retain the shipping order. Then the billing clerk bills from the shipping order. This is one of five copies of the freight bill. After the bill of lading is signed and the freight bill made, we script it. The third

and first sheet follow on to the destination. Upon arrival, the top part of the exhibit is retained in the office until the shipment is picked up. When the shipment is picked up, there is a paid stamp on here indicating we received the money. The consignee must sign for his goods and the signature is on here. Some of our shipments go collect and some are prepaid. This one went collect. The first and third sheets travelled with the shipment from Chicago to Toledo. After all of the papers have served their purpose, they are forwarded to our office and are in our files in Toledo. This particular shipment covers eight boxes of rug cleaning fluid. The pro number runs through these three exhibits. It appears to be 53194. On the bill of lading, 53195X and 53195.

The signature appearing on the third sheet, which is known as a script sheet, is the signature of the driver that brought the shipment through. Each article on the third page was in his truck when he transported it.

Government's Exhibit 64 is pro number 53888, received at our terminal in Chicago on January 21st, 1937. It is a shipment of five boxes of rug cleaning fluid from the Rug Life, Chicago, to the Mayfair Cleaners, Toledo, Ohio. The third sheet, which is the script sheet, indicates that it was transported with other merchandise on our unit 820, and that the driver was Cassman. The top sheet indicates it was delivered to the Mayfair Cleaners, per J. H., at Toledo. [fol. 192] Exhibit 65 indicates we received eight boxes of rug cleaning fluid from Rug Life, Incorporated, Chicago, consigned to Mayfair Cleaners, on March 10th, 1937. The third sheet indicates it was transported to Toledo in trailer 835, by driver Moyer. The mark "X" that appears, was inserted by myself. All the papers included in Exhibits 63, 64 and 65, are records of the Liberty Highway Company and accurately recorded the transactions represented thereon.

Cross-examination.

By Mr. Frederick:

The second sheet is a uniform motor carrier straight bill of lading. That was made out by the shipper. That happens to be the Liberty Highway Company instead of Transit, someone was not familiar with our name. That is why I am certain it was made out by the shipper. That

is filed with the company at the time of the shipment. I do not know who made that out. The third sheet, or script sheet, tells what is in that particular truck. It is made out by our dispatcher at the point of origin. The first sheet is the receipt. It is made out at Chicago and follows the shipment through. These are all made out at the point of origin. No. 1 sheet and No. 3 sheet are made out by employees of our company, and No. 2 sheet is made out by someone else. The same is true of the other exhibits.

As to the uniform bills of lading, they are at times made out by the employees of our company. They are all made out by the shipper. We sign them. That signature does not appear on the shipping order. The original and memorandum carry our signatures. The shipping order is on file and does not carry our signature. The bill of lading was on file at our office in Toledo. It was mailed to Toledo by our representative, possibly a day or two after the shipment.

[fol. 193] Cross-examination.

By Mr. Vavanagh:

I do not know who made out the bills of lading or shipping order. They could have been made out in our terminal in Chicago. We have someone who makes out bills of lading for customers that bring merchandise in. If merchandise is brought to the platform, the receiving clerk at our docks in Chicago makes out the bill of lading. These exhibits do not indicate any irregularity or anything peculiar about the shipment. The Liberty Highway Company demands a classification. There is such a thing as rug cleaning fluid. The only identification shown on the package is the name of the consignee and destination. It is not necessary to show what is in the container.

With reference to the receipt, eight boxes of rug cleaning fluid was brought to our platform on March 10th. We count the packages and give a signature for eight packages. It is up to us to deliver eight packages. We would only be concerned with what those packages contained if we thought there was collusion. There was nothing about these shipments that indicated collusion. Nothing about them that would indicate any irregularity. I never ascertained the contents of these boxes.

Redirect examination.**By Mr. Hopping:**

As to whether there is a classification for rug cleaning fluid, I would have to consult the classification. If there was not, we have a commodity tariff in effect which permitted transportation of this type of material. There was at this time a classification for alcohol and I judge it would have a higher rating. We call it rating instead of rate. In accepting a shipment as represented by Exhibits 63, 64 and 65, the Liberty Highway Transit accepts the shipper's word for the contents. If there is a question, the law gives us the right to examine the contents. Unless there is something unusual, we do not do so.

[fol. 194] **MILLS, WILLIAM H.**, called on behalf of the Government, testified as follows:

Direct examination.**By Mr. Hopping:**

I am Station Manager of the Norwalk Truck Line in Cleveland and have been in their employ for eight years. I am Station Master and General Freight Agent at the station where freight is loaded and unloaded.

I have the outbound agent's copies of bills protecting four shipments from Cleveland to Chicago with me. I do not know who made those shipments. I also have delivery receipts and shipping orders on these same four shipments.

I do have something to do with making the records of these shipments. The forwarding agent's record only is kept at Cleveland, Ohio. The papers I have in my hand are records of the Norwalk Transportation Company which are made in the ordinary course of business in Cleveland. I did not have anything to do with these shipments myself. I don't know who got these shipments from us. I have not seen anyone in the court room with whom I talked about these shipments. I did not see anyone deliver these shipments to the Norwalk Transportation Company. The merchandise covered by these tickets are

empty boxes, wooden. I was present at the dock when they were brought but I did not see anyone bring them. I did talk to someone after they were on the truck. I do not see that person here. I talked with the night dispatcher. I saw them after they were placed on the dock. I did not see the men who had them there that day. I have not seen anyone in the court room that I saw in connection with those boxes. I appeared before the grand jury in this case.

Q. Do you recall whether or not you testified at that time with respect to the persons who delivered those boxes?

Mr. May: I will object to that, any communication this man might have testified to in the Grand Jury.

[fol. 195] Mr. Hopping: I am not asking what he testified to.

The Court: He may answer.

Mr. May: Exemption.

A. I don't recall.

There was some discussion pertaining to correspondence in the file at that time. I do not know John Carbaugh of Cleveland, Ohio. I did have some discussion relative to correspondence in that file. That record is here. I had my discussion with you. The correspondence is a file pertaining to the charges or shipment of January 30th, 1939. That is my letter there. There is also a telegram, a letter, wire and waybill correction. It is between myself and Al Davis, rate clerk at Chicago. It is dated February 1st, 1939. It was made in the ordinary course of business of the Norwalk Truck Line and relates to a shipment protected by our Pro C-53984. This is recorded in this other group of papers.

Exhibit 162 is a wire sent me by the rate clerk in Chicago. I answered that by a letter which is Exhibit 163. There is also a waybill correction issued by our Chicago cashier which is Exhibit 164. The only other thing the records show are my carbon copy of a letter to Chicago. The Pro number that it refers to, C-53984 is Exhibit 165. This Exhibit 166 is a letter I wrote our claim agent returning delivery receipts, after I had returned from the previous investigation, made in the ordinary course of business of the company.

I have here additional delivery receipts which are records of the Norwalk Transportation Company, relating to shipments from Cleveland to Chicago. They are Exhibits 167, 168 and 169. I also have some shipping orders protecting four shipments from Cleveland to Chicago. They pertain to the same shipments and are Exhibits 170 to 173, inclusive. Exhibit 167 is issued at Cleveland, the billing station, and accompanies the shipment to the point of destination, Chicago. After delivery has been made, signature secured, it is returned to the home office, Norwalk. The signature upon delivery, appears in the lower right hand corner. That is where it says, "Full name of consignee." There are two names written there.

[fol. 196] Q. Those names are what?

Mr. Cavanagh: I object. The instruments have not been properly identified, not made under this man's supervision, and they haven't even been offered at this time.

Q. (By Mr. Hopping): Are these records made under your supervision?

A. They are made under my supervision, yes.

The Court: He may answer.

Mr. Cavanagh: Exception.

Mr. Frederick: Exception.

Mr. May: Exception, if the Court please.

Mr. Cavanagh: They haven't been offered yet.

The Court: I can't help that, he can testify as to what is on there.

The signature indicating delivery appears on the next to the last line. The signature indicating delivery is under "Received the above described property," then it says "F. C. Stevens. W. E. Lewis." The name of the consignee appears in the heading on the waybill. It is W. E. Lewis & Son, 5041 Lake Park avenue, Chicago, Illinois.

Exhibit 169 is made out in Cleveland at the time of forwarding the shipment. It is made out under my supervision at the time of forwarding.

Q. What is the consignee in that shipment?

A. W. E. Lewis & Son.

Q. Mr. May: The same objection as to defendants Klein and Frank. The exhibit has not been offered in evidence, and he is reading from the exhibit itself.

The Court: He may answer.

Mr. Frederick: Same objection.

Mr. Cavanagh: And for defendants, Barrett and Stevens, same objection.

All of the typewritten portion of the waybill is made out in Cleveland. It accompanies the shipment to Chicago until delivery is effected. The name of the consignee was put on by our Chicago station at the time of arrival there. The signature of delivery appears in the place where it says "Full name of consignee." It says "W. E. Lewis & Son. F. C. Stevens."

Exhibit 168 is made out in Cleveland and sent to Chicago, the same as the other. It contains a signature showing [fol. 197] delivery. The name of the consignee is filled in at Cleveland.

Exhibit 165 is made at Cleveland. At least that portion typed by a billing machine. It was altered by the Chicago station. In Chicago some additional entries were put on it.

Q. Which ones were they?

A. Those entries placed here (indicating).

Mr. May: Just a minute. I will object to the question and the answer. He is reading into the record contents of an instrument not offered in evidence.

The Court: Objection sustained, but not for that reason.

Mr. Hopping: I will re-state the question, your Honor.

Q. (By Mr. Hopping): Just indicate on the exhibit where the entry—where it is on the exhibit, that was made in Chicago.

A. An entry—

Mr. Fischer: I will object to that.

The Court: Objection sustained.

Mr. Hopping: All right.

The Court: Are you going to offer that in evidence?

Mr. Hopping: Yes.

The Court: When?

Mr. Hopping: I will offer them right now, but counsel will object to them, I assume.

The Court: I have got nothing to do with your offering them.

Mr. Hopping: I will offer them, your Honor.

The Court: What are they?

Mr. Hopping: Records——

The Court: Give the number of it so the record will have it clear.

Mr. Hopping: They are all——

Mr. May: 162 to 173.

Mr. Hopping: That is right. They are all records identified as records of the Norwalk Truck Line Company.

Mr. Frederick: I wish to note an objection to the introduction of Exhibits 162 and 163—this hasn't been marked separately, but is attached to 164.

[fol. 198] The Court: Is it a part of 164?

Mr. Frederick: I don't know.

Mr. Hopping: Yes, that was identified, your Honor, as carbon copies of the sheet just ahead, 163.

Mr. Frederick: Which are letters or telegrams or memorandums made out by someone in the Norwalk Truck Lines, as being prejudicial, argumentative, immaterial to the matter here in controversy, and as——

The Court: I can't understand that, it is so vague and indefinite as to what you are talking about. I don't know what you are talking about, prejudicial doesn't mean anything.

Mr. Frederick: They are statements or letters——

The Court: You mean, they purport to be.

Mr. Frederick: They purport to be letters or statements made by someone in the office of the Norwalk Truck Line, representing the writer's conclusions or opinions, on certain items pertaining to shipments, I presume.

The Court: Are there some of these defendants connected with that?

Mr. Frederick: There is no one named.

The Court: Oh.

Mr. Frederick: No one named in it, and I submit they are immaterial here, and contain some phraseology which might be interpreted, I submit, as prejudicial.

The Court: Well, what do you say to that?

Mr. Hopping: They are records pertaining to four shipments, as this witness said.

The Court: I know, but there are statements made by someone, you don't know who it is that makes them.

Mr. Hopping: As to one shipment, this witness testified he had some conversation with the Chicago office of his company, and these particular exhibits that counsel are objecting to, are attached to one he has identified as being

complete records of his office and company, pertaining to shipments between the Cleveland office of this witness and the Chicago office of the witness' company.

The Court: With reference to what shipment?

Mr. Hopping: Yes, your Honor, to one of the shipments which two of these other exhibits record.

[fol. 199] The Court: I don't know. I can't see that evidence is competent between—growing out of departmental correspondence, not connecting up any of the defendants here.

Mr. Hopping: Well, the other exhibits, your Honor, do have the names of persons in them, which connect them up.

The Court: You mean Stevens.

Mr. Hopping: Yes, your Honor.

The Court: Well, is that the fact that you are claiming, that it is the signature of the defendant.

Mr. Hopping: Yes, your Honor.

The Court: Then I will exclude it until that signature is identified. I merely permitted that one because the name "Stevens" was here, so there would be something here upon which we could say if that signature is proven and applied to a defendant. If nothing more is done, I will strike it out. I have allowed it to remain until you offered some more proof that is the signature of one of these defendants.

Mr. Hopping: We have offered by this witness only the identification of the record as being all records of the office.

The Court: Subject to exception, I will allow it to stand until such time as it is identified.

Mr. Frederick: That action does not relate to portions of Exhibit—well, of Exhibit 162 or 163, or the portion of 164 to which I referred?

The Court: What does that have reference to?

Mr. May: Correspondence between two departments.

The Court: With reference to—

Mr. Frederick: But the names that are used have not been brought out at all, nor are they named as co-defendants or co-conspirators, merely departmental communications upon a state of facts and the opinion or conclusion of the writer about that state of facts.

The Court: It is not competent here unless you can make it material. As far as I know, there is nothing in there that applies to this case. In other words, it is

claimed this gentleman from Cleveland had correspondence with a representative in Chicago, regarding particular [fol. 200] shipments. That is not competent against these defendants.

Mr. Hopping: Not alone, your Honor, but there were four shipments which this witness testified to, and he has testified further, there was correspondence as to the waybill in Chicago, and some correspondence back and forth regarding it.

The Court: There was? Does that make it competent?

Mr. Hopping: It is all part of the record of that company of that shipment.

The Court: That was a part of your record, but I fail to see the competency as binding upon these defendants. In other words, supposing you ask a lot of questions and then say Sam Brown transferred that and knows it is bootleg alcohol. Is that competent against these defendants? Or supposing Sam Brown was defendant here—

Mr. Hopping: Where there is a connection—

The Court: It may go to the order of proof, but it is very important to connect it with these defendants, and I will see how it develops afterwards. I will look them over, however, but as to correspondence between this gentleman here and somebody representing a trucking company in Chicago, it is not binding on these defendants. The only thing they can show are the physical facts of receipt of goods for transportation from and delivery to, and if, of course, the man knows if a receipt was given of these defendants, or some of these witnesses on the other side, that you produced, that might be competent.

Mr. May: We have no objection to 170, 171, 172 and 173. They are the original shipping records of the Norwalk Truck Line. All defendants agree on that.

The Court: All right, we will take an intermission here.

Mr. Hopping: May I ask about these other four?

Mr. May: Counsel has an objection.

Mr. Hopping: I would like to ask one other question before recess.

The Court: All right.

By Mr. Hopping:

Q. Look at Exhibit 162, and tell me if that refers to any one of the Exhibits 165, 167, 168 and 169?

[fol. 201] A. It does.

Q. To which one?

A. Pro C-53984.

Q. That is 165, bearing Pro number C-53984?

A. That is right.

Q. Then, am I correct that 168, 167, and 169, are records of shipments in your Cleveland office, is that correct?

A. Those are records.

Q. Of shipments out of your Cleveland office to Chicago?

A. That is right.

Q. And 165 is a record out of your Cleveland office, in which you had additional correspondence relating to this shipment?

A. That is correct.

Mr. Hopping: That is all at this time.

The Court: All right. We will take an intermission.

(Thereupon a short recess was taken.)

Mr. Frederick: For the purpose of the record, there is one exhibit, 166, which I did not have before me when I was noting my objections. It is the communication.

Mr. Hopping: Your Honor, the defense's objection was sustained by your Honor as to 162, 163, 164, and 166. The following were received: 170, 171, 172, and 173, and there is pending 165, 167, 168 and 169.

Mr. Fischer: Are you offering them?

Mr. Hopping: Yes, the offer has been made as to Exhibits 165, 167—pardon me, 165, 167, 168 and 169.

The Court: I thought you said 170, 171, 172 and 173.

Mr. Hopping: They were received.

The Court: There is no objection to some of them.

Mr. Hopping: 170, 171, 172 and 173.

The Court: There is no objection to them?

Mr. Hopping: No objection.

The Court: All right.

Mr. Fischer: As to Exhibits Number 165, 167, 168 and 169, the defendants Barrett and Stevens object to the introduction of the documents which purport to be delivery receipts, because of improper identification, insufficient identification by the witness, because the documents purport to contain information about their face which were not identified by the witness, and because the witness has admitted he was not present when the merchandise as represented by the respective shipments was

not identified by him—he was not present when they were delivered.

The Court: What are they, freight bills?

Mr. Fischer: They purport to be delivery receipts, your Honor.

The Court: It is the equivalent of freight bills, I suppose. Well, this witness has testified as to having received and read these signatures. Now, I still stand to the ruling I made. I will receive them if you identify the signatures. I merely permitted them to show a shipment was made in the regular course of business, from one place to another place, point of destination, and whatever they state the shipment is.

Exhibit 171 is a shipping order of October 13th, 1938, made out by our dispatcher in Cleveland.

Exhibit 167 is the billing protecting the movement of this same shipment.

Exhibit 170 was made out by our dock foreman, Earl Meyer.

Exhibit 168 is the billing on that shipment.

Exhibit 170 relates to a shipment on November 11th, 1938.

Exhibits 171 and 167 both relate to the shipment dated October 13th, 1938.

Exhibits 170 and 168 both relate to the shipment of November 11th, 1938.

Exhibit 168 which bears the date November 16th, 1938, is identified as relating to the same shipment, by the pro number which is assessed on the shipping number after billing is issued. That number is C-9570.

Exhibit 173 was not made out by our billing clerk but by someone outside of our organization. It is a record of our Cleveland office of another shipment.

Exhibit 169 pertains to that shipment.

Exhibit 173 is a shipment dated January 7th, 1939.

Exhibit 172 is a part of our Cleveland office records of a shipment sent out. I do not know who made it out.

[fol. 263] Exhibit 165 pertains to it. The pro number corresponds.

Mr. Hopping: Your Honor, I would like to read Exhibits 172, 173, 170, and 171, at this time. Unless there is objection by counsel, I won't read all the printed matter on the form part, but the part filled in. "The Norwalk

Truck Line received, subject to classifications and tariff, in effect on the date of issue of the shipping order at Cleveland, Ohio, January 30, 1939, from H. Miller, the property described below, in apparent good order" and so forth, and the printed matter. To the next line which reads, "Consigned to W. E. Lewis & Son, Chicago, Illinois, will call. Number of packages, 28. Description of articles, empty boxes. Weight, 560 pounds. Class of rate, 97. And the footing in column 543." That was Exhibit 172.

Reading now Exhibit 173, "Norwalk Truck Line at Cleveland, Ohio, January 7, 1939, from H. Miller, consigned to W. E. Lewis & Son, Chicago, Illinois, deliverer and carrier filled in, will call; number of packages, 38. Description of articles, empty wood boxes." Will you read the next of those documents, please, Mr. Mills?

A. Eleven pounds.

Q. Eleven pounds.

A. You mean this (indicating)?

Q. And the next column?

A. Weight, 418 pounds. Rate, 97 cents. Extension, \$4.05.

Q. Reading now Exhibit 170. "Norwalk Transport Line, at Cleveland, Ohio, from W. Miller, 11/11/38, consigned to W. E. Lewis, 5441 Lake Park, Chicago, Illinois, 30 empty boxes, weight, 430, class of rate, 37, and a footing, 4.17." What does this entry mean?

A. Prepaid.

Q. And the writing in the one which I haven't read?

A. Checks, which he shipped at Norwalk Truck Line docks.

Q. Reading now Exhibit 171, "October 13, 1938, received Cleveland, Ohio, from Fred Miller, consigned to W. E. Lewis & Son, 5041 South Lake Park, Chicago, Illinois, 40 empty wooden boxes, 440, class of rate, 97, receipted, \$4.27 paid." The marking "W," then, Mr. Mills, what does that mean.

[fol. 204] A. The checker's initial, and his count on receiving the merchandise.

Q. Four X's meaning 40 boxes received?

A. That is right.

Q. There is a number appearing on 171—85384, what is that?

A. That is our pro number.

Q. Pro number?

A. Right.

Mr. Hopping: That is all.
The Court: Cross-examine.

Cross-examination.

By Mr. Fischer:

I was present when Exhibits 165, 167, 168 and 169 were compiled. Exhibits 172, 173 and 171 were compiled at the dock office. Those are the shipping orders. Both of the shipping orders were prepared by the shipper. One by dispatcher Flint, and the other by foreman Meyers. I identify the ones as being prepared by the shipper in that the handwriting does not belong to any of my employees. I do not know the name of the individual who prepared the other two documents. His name should be H. Miller. That is his signature. I do not know any H. Miller, nor do I see anyone in the courtroom I recognize as him.

It is customary for our dock foreman to make out the shipping orders upon request of the customer. Any customer who goes to the dock with the merchandise may make out his own shipping order. I saw the shipments described on these tickets on our truck. I watched it loaded from the dock on to our truck. There was nothing unusual about these shipments except that it was very light and bulky. The boxes were about two feet square and three feet long. They were set up but without lids. They did not fit inside each other. We loaded the entire shipments on our truck. There was other merchandise on the trucks also.

Government's Exhibit 73 is the size of the boxes. The boxes loaded were second hand. I was not present when the merchandise was received in Chicago so I do not know who picked it up there.

[fol. 205] OAKLEY, WILL; called as a witness on behalf of the Government, testified as follows:

Direct examination.

By Mr. Hopping:

I am the Michigan Division Manager for Cushman Motor Delivery Company, located at 5212 Vermont street, Detroit. I have been with this company for six years. I can identify

Government's Exhibits 1 and 2. They are pages of what we do in the Cushman Motor Delivery Company and are made in the regular course of business and are accurate records of the transactions they record.

Exhibit 1 is the first copy of a series of five freight bills which we issue on every shipment moving over our lines. It indicates January 30th, 1936 as the date of the shipment. This is a freight bill. Pro number 16730-C, showing that on January 30th, 1936 there was delivered to our Chicago dock, a shipment from the Golden Extracts Company, Chicago, Illinois, consigned to Palmer Distributing Company, care of Wyandotte Cartage Company, 3630 Biddle avenue, Wyandotte, Michigan. It consisted of fifteen cases of caramel extract: 3975 pounds, rate of 38 cents, \$15.11, collect. This was paid by the Wyandotte Cartage Company, \$9.06, January 31, 1936. The \$9.06 represents our proportion of the freight from Chicago to Detroit. Wyandotte Cartage Company collected the difference for the haul from Detroit to Wyandotte, that is, \$6.05.

This shipment, like all freight bills, are made up in five sheets. The first is a white copy, the next pink; the third blue, then another white one, and a yellow or orange one. One is filed away with the bill of lading in our Chicago office. Another is mailed by special delivery letter. The other three goes along with the script sheet. The driver on the truck that brings the merchandise, delivers it. This exhibit is one that came with the driver.

The next step is making a script sheet which shows the exact nature of all merchandise carried on that particular truck. Exhibit 2 is that script sheet. It shows on the ninth line of Exhibit 1. This shows that trailer No. 194 received [fol. 206] this shipment at Chicago, brought it over the highway to our Detroit dock. The truck was unloaded, and the man okaying the script showing that all shipments were intact when reaching Detroit, happens to be J. D. Parker, one of our employees who checked the truck here. The shipment was then delivered to the Wyandotte Cartage Company. They called at our dock and picked it up. The record shows the signature in ink of that company. This appears on Exhibit 1.

Exhibit 3, the blue sheet, shows our pro No. 13842-C, covering a shipment dated January 15th, 1936, from the Golden Extract Company, Chicago, to the Palmer Distributing Company, care of Wyandotte Cartage Company,

3630 Biddle avenue, Wyandotte, Michigan. It consisted of fifteen cases of caramel extract; revenue of \$15.11, collect. It shows that this was picked up at our dock and for some reason, the proportional rate was not paid to the party who picked it up and signed for it as the Wyandotte Cartage Company.

Exhibit 4, the script sheet, shows truck 154, trailer No. T-154, brought through this shipment. That exhibit shows all the shipments on that particular unit. It is shown on Exhibit 3 as being delivered in Detroit to the Wyandotte Cartage Company. Neither Exhibit 3 nor 4, show how the shipment arrived at the Cushman office in Chicago, that is, whether it was delivered to our dock or picked up. This one, I beg your pardon, shows it was delivered to our dock by a cartage company. That is denoted by the "C".

Exhibit 5 is our Pro No. 16066-C, dated January 27th, 1936, covering a shipment from the Golden Extract, Incorporated, Chicago, to Palmer Distributing Company, care of Wyandotte Cartage Company, Wyandotte, Michigan. It covers eight cases of caramel extract, revenue, \$8.06, collect. It is signed for by the Wyandotte Cartage Company, per W.C. It shows it was delivered to us at our Chicago dock by the Chicago Cartage Company.

On Exhibit 6, which shows our script covering truck No. 85 did bring that shipment from Chicago to Detroit.

(Exhibits 2, 4, and 6 are offered in evidence.)

Exhibit 174 is a straight bill pro 25883-C, dated March 15th, 1936, covering a shipment from the Waukegan Chemical [fol. 207] Company, Waukegan, Illinois, to the Aukerman-Stearn Company, care of Commercial Warehouse, Detroit, consisting of sixty, five-gallon kegs of deodorant chemical, revenue, \$15.60, collect. It has on it, "Rush, rush, rush, early delivery Tuesday morning." It shows that this was delivered to us by the Chicago Cartage Company in Chicago. It was paid per W317. It shows that it was delivered to the Aukerman-Stearn Company, per S. J. Morgan, in Detroit. It was picked up from our Detroit truck and shows the signature on there of Dave Fidler.

Exhibit 175 is our freight bill Pro No. 26649-C, dated March 19th, 1936, from the Waukegan Chemical Company, Chicago, Illinois, to Aukerman-Stearn Company, care of Commercial Warehouse, Detroit, and shows by the connecting line reference, delivered to our Chicago dock. This

shipment consisted of fifty-nine kegs of deodorant chemical, \$19.72, collect. It was signed for by Auckerman-Stearn, per M. J. It is M. J. Morgan, I would say. It also shows the signature of Dave Fidler.

Mr. Hopping: I offer in evidence Government's Exhibits 174 and 175. Nothing further on direct.

Mr. Frederick: These were offered, 2, 4 and 6?

Mr. Hopping: 2, 4 and 6.

Mr. Frederick: No objection, save the objection they will be subsequently connected up with the defendants, and as to the Exhibits 174 and 175, the same objection.

Mr. Hopping: That's all from this witness.

■ Cross-examination.

By Mr. Cavanaugh:

I do not know the source of these shipments in Chicago. Referring to Government's Exhibit 4, I do not know whether one of our pieces of equipment picked up that particular shipment or not. It does appear that way. It does not show as being delivered by Chicago Cartage Company. We do have a pick up and delivery service, both in Chicago and Detroit. The bill of lading is made out in triplicate. It is made out when the shipment is delivered to our warehouse. I would not be able to say whether that was done on these shipments. I know they were made out but [fol. 208] we were not able to locate the bills of lading on those latter two shipments. I do not know the custom in Chicago relative to our employees making out bills of lading. In Michigan, the practice is, in cases where the shipper does not understand making out bills of lading, the receiving clerk makes it out for him. The shipper, of course, gives the classification for the merchandise and signs the bill of lading and shipping order. I think it would have made a difference if the shipper told him it was alcohol, instead of caramel extract. The shipping clerk makes no other inspection than to count the actual number of pieces and check them with the information given by the shipper. As to the contents, he accepts the shipper's word. He may have made out the shipping orders or bill of lading in that it is common practice to do so. Nothing here indicates there was anything unusual about these particular shipments. It was only on the last shipment, and the records would

not indicate that. There is nothing to indicate there was anything unusual or unlawful in these shipments. Nothing on the freight bill indicates who the cartage man was who delivered these to our dock. I do not know of my own knowledge whether or not it was any of the defendants in this case.

Cross-examination.

By Mr. May:

With reference to Exhibits 174 and 175, it was shipped from Waukegan, Illinois, which is very often called North Chicago, to our Chicago dock by a cartage company. The signature on there, Dave Fidler, gets on there when the shipment is picked up at our dock. The one who receives it from our delivery clerk signs for it. That signature should go in the right-hand corner, though it does not always appear there. They even sign it on the back at times. There is some writing on the back of Exhibit 175, and it was placed there by "Julius Seymour, City Welfare." He worked for me as a dock man at one time. There is a signature on the right-hand corner of Exhibit 175 denoting a person received the shipment. Whether one of these men received it or the other did, I would not be able to say, not having [fol. 209] delivered the shipment myself. Either of these men whose signatures appear may have received the shipment. The same is true of Exhibit 174. Either Fidler or Morgan received the shipment. I saw the writing, Dave Fidler, on Exhibits 174 and 175, before taking the stand.

Re-direct examination.

By Mr. Hopping:

I was at the company offices on the dates these shipments were delivered. I recall the shipment on the 19th. I saw a leakage on the floor. From the odor and taste, it seemed like alcohol.

Re-cross examination.

By Mr. May:

When we saw the shipment marked "rush, rush, rush," Mr. Welch, our dispatcher at that time, seemed to know the parties to whom it was going. They had evidently left a

telephone number with him or a place to contact them. He called them and asked them to come over and get it. I did not tell him there was alcohol in the cans. He did know the man they were going to.

FIDLER, DAVID, a witness on behalf of the Government, testified as follows:

Direct examination.

By Mr. Hopping:

I live in Detroit. At the present time I live in River Rouge. I operate a beer garden there. I have lived in Detroit—"make it twenty-six years."

I wrote on Exhibit 174 at the time of receiving the shipment. At that time, I wrote Aukerman-Stearns, S. J. Morgan. That appears in the lower right-hand corner as showing receipt. That receipt has since been shown to me when I wrote on it again. The second time I wrote, Dave Fidler, my own name.

[fol. 210] I believe the first I saw of this paper was at the dock when I came over to receive the merchandise. We asked the dock man for a shipment consigned to Commercial Warehouse, and he said it had not arrived at that time. Mr. Klein and I went over there at the time. Mr. Klein is one of the defendants here.

When we went over to get the shipment, they told us it had not arrived from wherever it was supposed to come from. We told him when it did come, not to send it down to the commercial Warehouse, but to hold it and we would call for it. We told the dock man. I do not know his name. By "we," I mean both Mr. Klein and I. Both of us. Before going over to the dock that day, Mr. Klein came to my place of business. Said he had just received a bill of lading in the mail. I said I would go down with him and see if the shipment had arrived, to the warehouse, or the dock, whatever you may call it. At that time my place of business was on Blaine near 12th, in Detroit.

Harry Klein came over there to see me and had a bill of lading with him. As to whether it was the same shipment described in that exhibit, I would want to know which of these shipments was made first.

I can identify Government's Exhibit 175, and did obtain that shipment. Max Bambdas was with me when I got the second shipment. Before receiving that, I talked to Mr. Klein. On both of these occasions, Mr. Klein brought the bill of lading to my place of business. On the first shipment Klein and I went down there to receive the shipment. It was not there. I believe I left my phone number to have the dock man call me or I told him I would be back later in the day. Whether I went back the same day or not, I don't remember. I might have gone over there the next day to receive the thing and Mr. Klein paid for the shipment.

Exhibit 174 is the first shipment, on March 16th, 1936. The second one was three days later. As to the second shipment, Mr. Klein brought the bill of lading and I went to pick up the shipment. I paid the freight on it myself. He is supposed to refund it to me later. The first shipment was alcohol. I do not know how much. I do not remember. It was five gallon kegs of deodorant chemical. I don't re-[fol. 211] member how many there were in this shipment. The alcohol received was in special constructed cans. It was not marked "deodorant chemical" on the bill of lading, but was on the little cardboard they hang up on the merchandise when the shipment is made. I cannot say for sure whether it was marked on that tag. After I got it from the Cushman dock, I sold it for alcohol. I tested it before selling it with a hydrometer.

There were no tax stamps on either shipment. The second shipment was also alcohol.

There were no tax stamps on the containers the alcohol was received in. The second shipment came in the same kind of containers as the first. I don't know what you might call it. A can, a special designed can. I did not sell the second shipment. The Detroit Police Department seized it on my way from the dock. I was only about four or five blocks from the Cushman dock. If March 19th, 1936 is the date it arrived, then that is the date it was seized. I signed Aukerman-Stearn, M. J. Morgan, for the second shipment. Later on I signed my name on that exhibit. The first time just Harry Klein and I went to the Cushman dock. The second time just Max Bambdas and I went to the dock.

I first talked to Harry Klein about getting this alcohol three or four days previous to March 16th, 1936. This con-

versation was in the lobby of the Livernois, Grand River Livernois Recreation at 9666 Grand River avenue. At that time I was asking if there was any possibility of getting a shipment of alcohol. "I can't explain myself." I believe he said he expects some in shortly. The next thing that happened was we got it. The next thing that happened was that he came over to my place of business with a bill of lading and I came to the dock and got it, took it away, and sold it. I asked him if he was going to get anymore of this alcohol and he said "yes." He brought the bill of lading over to the store, the same as on the previous occasion. I paid for the second shipment. I talked to him after that. I talked to him after the second shipment was seized. This conversation was upstairs in the Grand River Livernois Recreation. Right after it was seized, I was locked up. I did not talk to Harry Klein while I was locked [fol. 212] up. I was locked up from about five o'clock in the afternoon, until I was brought down to the Federal Building about eleven o'clock the next day, which I believe was Saturday. I got out on bond. I then went to see Harry Klein. I asked him if he would pay part of the bond and attorney fee. He said no, that he did not have anything to do with it. I took a swing at him. That was my answer. I don't thing I talked with him at any other time about that shipment, as to payment for it or anything of that kind.

Q. Yesterday afternoon, Mr. Fidler, we were talking about the conversation you had with Harry Klein, the defendant, after you were arrested with a load of alcohol near the Cushman Roadway office, is that right? Do you remember that?

Mr. Frederick: At this juncture, may it please the Court, I would like to note an objection to the testimony of this witness and ask that the Court instruct the jury to disregard it insofar as defendant Braverman is concerned, inasmuch as this witness is named as a co-conspirator in an indictment other than that in which the defendant Braverman is charged and the overt acts alleged are under that indictment and that is a separate offense than that which is charged in the indictment in which the defendant I represent is named.

Mr. Hopping: The first indictment, if the Court please, does not charge this witness as a co-conspirator by name but it does charge the location of Harry Klein's place as

the location of the conspiracy and charges that it was entered into by the persons named in that indictment as defendants and co-conspirators and divers other persons. He is named as a co-conspirator in the second indictment which charges Harry Klein as defendant.

The Court: Objection overruled.

Mr. Frederick: Exception.

Mr. Fisher: And exception as to defendants, Barrett and Stevens.

I have known Harry Klein for about fifteen years. I have been in the habit of going to his place of business at 9666 Grand River for about four years. It would be more than that now. I believe I began going to his place of business about four years prior to my arrest which was [fol. 213] March, 1936. During the year 1936, I used to be there every day. In 1935, I was there very often but could not say just exactly how many days a week.

In the courtroom, I see some people that I saw in Harry Klein's place during that time. They are Mr. Braverman and Mr. Wainer, defendants here. Nothing special happened when I saw Harry Braverman in Harry Klein's place of business. I believe I did see Harry Braverman in conversation with Harry Klein. When I saw Harry Braverman in Harry Klein's place it would be always after twelve o'clock noon, in 1936, I don't know the month. I don't know if it was before or after my arrest with this load of alcohol. I saw Al Wainer in Harry Klein's place in March, 1936. I saw Al Wainer and Harry Klein in conversation with each other. I was not present and could not hear what was said between them. I was not present so that I could hear what was said between Harry Klein and Harry Braverman when I saw them talking.

I did buy alcohol from someone else in Harry Klein's place in 1935 or 1936. That was Joe Martin. I was convicted for the possession of the alcohol with which I was arrested as I testified here yesterday. That was in Judge Lederle's court. I was not sentenced. I paid a fine. Max Bambdas, who was arrested with me, was not convicted. I don't know where the alcohol came from that I got on that delivery ticket, which I received from Harry Klein on March 16th, 1936. He did not tell me where it came from. I do not know where the alcohol came from that I got on the delivery ticket dated March 13th, 1936. I got the bill of lading from Mr. Klein. I didn't know the exact loca-

tion where it was coming from, except it said on the tag that it came from some place in Indiana, I guess. Harry Klein did not tell me where it came from, or who it came from. I transferred it from the original kegs in which I received it, to other containers. I sold it in five gallon cans. There were no tax stamps on the five gallon cans I sold.

Q. Did you hear any conversation in Harry Klein's place in his presence at any time other than you have testified regarding the handling of alcohol?

A. We used to talk about it quite often.

Q. When you say "we," who do you mean?

[fol. 214] A. Well, it would be Mr. Klein, Joe Martin and myself.

Klein, Joe Martin and I talked about the alcohol business in Klein's place for about three or four years. That would be from 1936 to 1932. I have never been arrested and convicted on any other occasion. I have received alcohol from Harry Klein at other times than these two shipments.

Q. Tell us when you received it, first. Was it between 1932 and 1936?

A. Yes.

Q. As you testified. What parts of that period were you receiving alcohol from Harry Klein?

Mr. May: I will object to it, if the Court please, as being outside the limitations of this indictment.

The Court: Objection overruled.

Mr. May: Exception.

I don't know the exact period over which I received alcohol from Harry Klein, but it was over a long period of time. It was in 1936, also I think in 1935. It was delivered to my by, I believe, Bill Hoban and Joe Stein. I saw Bill Hoban employed around Harry Klein's place. I do not know how long he was employed there, but it was quite a while. Joe Stein was not employed in Harry Klein's place. I do not know the location where the alcohol came from just before it was delivered to me. Harry Klein never told me where he got his alcohol at that time. I was over to Harry Klein's house but for no special purpose.

Q. Did you ever go over to his home to get alcohol?

Mr. May: I object to this line of questioning as being leading. He is asking the questions and asking for yes or no answers.

The Court: He may answer.

Mr. May: Exception, on the record.

(Question read by the shorthand reporter.)

A. No, sir.

On one occasion, I believe, I took some empty bottles to his home. On another occasion I was at his home when his house was robbed of a safe and I drove him down to his house. Hoban was employed as a doorman in Harry Klein's place. By that I mean he was watching to see who comes [fol. 215] up to his place. No strangers were to be allowed there. It was a handbook and the rule is that no strangers are allowed in handbooks for the simple reason that it is illegal to operate a handbook. Bill Hoban was doorman on the handbook. It was in the handbook part of the premises that I did this business about the alcohol. I do not know whether Hoban was working as doorman on the bookie at the same time he was delivering alcohol to me from Harry Klein. At the time he was delivering alcohol to me, Hoban was not working for Harry Klein as a driver. I paid Harry Klein for the alcohol I got from him.

Cross-examination.

By Mr. Frederick:

I did go to Mr. Klein's place of business between the years 1932 and 1936. In 1935 I went there several times a week and in 1936 virtually every day. During that time I saw many people in and about the place. On each of these occasions I went not only in the bowling alley, but also into the handbook. I saw a number of people in the portion I have described as the handbook. They were placing bets. There was other gambling in there besides horse bets. I saw other people gambling at other games than horse races. I would see anywhere from 25, to 50, or 75 people in the handbook.

On the occasion I saw Mr. Braverman at Mr. Klein's place, I saw him in the handbook upstairs. He was gambling. He was playing the horses. I do not know what he was talking to Mr. Klein about. I do not know whether he was talking to Mr. Klein about his bet on the horses, the

weather or family or anything else. I believe it was in 1936 that I saw Mr. Braverman in there. I did say on direct examination that I saw Mr. Wainer in there in March, 1936. I think it was after I saw Mr. Wainer in there that I saw Mr. Braverman. I am not positive whether it was before or after. I believe it was after. I don't believe I ever talked to Mr. Braverman at that place. I never had any business transactions with Mr. Braverman. As to whether Mr. Braverman was talking any differently or appeared any differently than any other customer, I can [fol. 216] only say I don't know what was said when he talked with Mr. Klein. I saw other people in the place talking to Mr. Klein many times during the day. When I testified that no strangers were allowed in the handbook, I meant people that were not known to the doorman. There were people from all walks of life in the book, as well as in the bowling alley. I do know that some of the people I saw gambling in the book were in legitimate businesses. They were placing bets on horses. The times I have described are the only times and the only place I ever saw Mr. Braverman.

Cross-examination.

By Mr. Fischer:

I do not know the defendants, Stevens and Barrett.

Cross-examination.

By Mr. May:

I do not know if I am a defendant in this case. I have been in court before on a liquor violation. I plead guilty. I did not have a trial on the case. In that case I did not plead not guilty. I plead guilty. I have never been before a Judge in this case. I have been in Detroit approximately twenty-six years. I am a married man and have one child. I have three brothers. They have not been associated in the alcohol business. I am positive of that.

Q. Neither one of your brothers have ever been involved in the liquor business? Your answer is what, to that?

A. I don't know.

Q. You don't know whether they were in the alcohol business?

Mr. May: Will you read the first question and answer to me?

Mr. Hopping: Your Honor, it is not the same question. The first question was, were his three brothers associated in the alcohol business; he said, "no." Then he asked if any one of them had been in the alcohol business, and he said he didn't know.

[fol. 217] By Mr. May:

Q. Mr. Fidler, you know as a matter of fact, your brother or brothers have been in the alcohol business?

A. I don't know their business.

Q. Well, do you know whether or not either one of them or all of them have ever been arrested and convicted for a violation of the alcohol law?

A. I don't know.

I have been in business in River Rouge for three and one-half years. Before that, my business was at Blaine and Twelfth. That business was bottles and supplies. Not labels. I did sell alcohol there. Before that, I was on Twelfth and Fenkell. My business there was malt, glass supplies and beer. I did not sell labels there. I do sell alcoholic beverages at the place of business where I am now located, under a license issued by the Liquor Control Board of the State of Michigan. I have owned that business about three and one-half or four years. I am not an American citizen. The license for that business is not issued to me. The license is issued to Herman, a brother of mine. It is his place. I am part owner. I did not make the affidavits out that went to the State Liquor Control Commission. He made them out. I am a part owner. As to whether you must be an American citizen to hold a license from the State Liquor Control Commission, I say I don't hold a license.

Q. But you own part of the business?

A. Well, he was good enough to let me work there.

Q. He was good enough, as a matter of fact, to let you use his name?

A. I am not using his name. He is using his own name.

I did sign my name on Exhibits 174 and 175. I do not know what date I signed. With reference to the time I received the merchandise, I signed my name on them when

Mr. Hopping asked me to identify that they were the bills, the merchandise I received. That was after I received the merchandise. That is true of both Exhibits 174 and 175. I am not the Aukerman-Stearn Company. I did sign that name. Other names I have used in my life time are David Fidler, H. J. Morgan. That is about the only ones. I did [fol. 218] use S. J. Morgan or M. J., I don't know which. Government's Exhibit 174 is S. J. Morgan. None of those names are mine. They are only names I used other than Dave Fidler. I do know who the bowling alley we have been talking about belongs to, but I can't think of his name. It does not belong to Klein. When I speak of going to his place and saying the bowling alley, I do not mean Klein's bowling alley. I did not say that in 1936 a man by the name of Joe Stein delivered alcohol to me. I think I said that in 1936 a man by the name of Hoban delivered alcohol to me. Stein delivered alcohol to me probably in 1932. It was either 1930, 1931 or 1932, I don't know which. He did not deliver to me in 1935 or 1936. I am not on bond at the present time. I did testify before the grand jury in this case.

At the time I was arrested, I did not give a statement to the arresting officer. I did not tell them of my connection with the case. I did not tell them anything. I have discussed this case with the officers of the Alcohol Tax Unit. The first time was about two weeks or so ago. That is the first time I ever discussed the case. I had not discussed it with the District Attorney prior to two weeks ago.

Exhibit 174 is the first shipment I referred to. When I went down to get it, it had not arrived. I came back at a later date. I came back alone. Mr. Klein paid for that first shipment. As to how he paid for a freight bill when he was not with me, I do not know how he paid or when he paid, but he was there before. He was at the dock before I was there. He made a trip before I went down. I did not see him there. It is not true that Exhibit 174 was turned over to me by Louis Klein and not Harry Klein. It is not true that this Exhibit 174 was turned over to my brother. It is not true that the receipt was turned over to my office. It was turned over to me. Exhibit 175 was turned over to me by Klein. None of these bills were ever handed to me. That's the bill that was signed at the dock. Nobody ever turned these two bills over. I think you are referring to the bill of lading. Not these bills here. These

bills here are copies from the trucking company. Exhibits 174 and 175 were not turned over to me by Harry Klein. [fol. 219] I did testify recently before the grand jury in this case. As to whether it has been longer ago than two weeks, I don't know the exact date. It don't seem like it was longer than three months. I did talk to officers of the United States Government prior to April 23rd, 1940 about the facts involved in this case. That was a short time before I testified in the grand jury. I do not know how long a time elapsed between the time I talked to the officers and the time I testified before the grand jury.

I went down with Max Bambdas to pick up the contents contained in Exhibit 175. I do not know what business Max Bambdas is in. I never had him working for me in the alcohol business. I never did any alcohol business with him. He never cooked any alcohol for me. He never worked as a driver for me or worked for me in any capacity. He did not work with me.

At the time I picked up the contents of Exhibits 174 and 175, I signed a fictitious name. The people from whom I secured them did not know me. I did not sign Klein's name on them. I took the contents of the first shipment and sold it. I knew it was a violation of law. I did not sell the contents mentioned in Exhibit 175 because the police arrested me. I did not have a chance to sell it. The police arrested me at that time because someone phoned them. I do not know who that someone was. I was only about four or five blocks away at the time I was arrested. Max Bambdas was with me at the time and we were both arrested. His case was dismissed. I was brought down to the Post Office and a bond was fixed. After my release on bond, I went out to Harry Klein's. I demanded money from Harry Klein because I wanted him to pay half of the attorney fees, half of the bond and everything else that was connected with the case. I do not know what the attorney fees were but I think the attorney asked me \$400.00 or \$500.00. I gave him about \$200.00. The premium on my bond was \$37.50 and \$187.50. When Klein refused to give me any money, I struck him.

My brother was not with me at the time, though Max Bambdas was. He did not strike Klein.

I used to gamble in Klein's book and lost money there. I also made money. It was not on this occasion that I [fol. 220] wanted to get some money from Klein that I had

lost gambling there. I do not mean that I did try to get some money from him that I lost gambling on any other occasion. I do not recall whether I threatened Klein if he would not give me the money. I do not know what I said. I guess I was too excited.

No one has told me that if I would testify in this case I would not be prosecuted. I was already prosecuted and paid a fine in this case. I don't think I have anything to be afraid of. I was never prosecuted for the alcohol contained in Exhibit 174.

Q. So that you have never been prosecuted in this case, have you?

The Court: What do you mean, in this case we are trying?

Mr. May: In this case.

The Court: He is not named as a defendant?

Mr. May: As far as I know, no.

The Court: When he said he was prosecuted in another case, it was the case when he came in and plead guilty.

Mr. May: That's right.

The Court: When the police caught him with a lot of alcohol.

Mr. May: I asked him if he was prosecuted in reference to this case, or promised immunity in reference to this case.

A. I was never promised anything in reference to this case. I have been in the illegitimate whiskey or alcohol business since 1923. The only time I have been prosecuted was that one time when I plead guilty and was fined in the Federal Court. I was convicted in the State Court once. That was in 1922 or 1923, for possession of ten gallons of moonshine whiskey. I have not been arrested and convicted upon any other occasion, though I have been in the alcohol business since 1922 or 1923. I have not been in it steady. By not steady, I mean I was in the restaurant business for about seven years. That was located at Congress and Woodward. I believe it was in 1927 and 1928 that I was on Congress. In 1929, on Woodward. [fol. 221] I bought alcohol from a man named Joe Martin in 1935 and 1936. Bill Hoban was one of Joe Martin's drivers. He is the man I just testified as being the door-man for Harry Klein. When Hoban delivered alcohol to

me, it was both Martin's alcohol and Klein's. I have played cards at Klein's home.

I never talked to Mr. King about this case. Off hand, I did not know him. He was an agent of the Alcohol Tax Unit of the United States Government. I knew that. I never saw him in Harry Klein's place. I did see Government officers in there. I saw Mr. White and Mr. Carr out there. They are also agents of the Alcohol Tax Unit. I do not know whether Klein had been employed by those agents of the Alcohol Tax Unit or not.

Redirect examination.

By Mr. Hopping:

My brother was not with me at the time I struck Mr. Klein. When I testified that I saw some alcohol tax agents in Harry Klein's place, I mean that I saw them in the bookie. The ones I saw in there were Mr. White and Mr. Carr. Neither of them were present when I talked to Harry Klein about alcohol.

I received a bill of lading on Exhibit 175 from Harry Klein and took it with me to the Cushman dock to pick up the shipment. When I turned in the bill of lading, Exhibit 175 was handed to me to sign for the shipment. The same procedure was true on Exhibit 174. I left Exhibits 174 and 175 with the company and took the shipments away. I also left the bills of lading which Harry Klein had given me.

Recross examination.

By Mr. May:

Mr. Carr is a short fellow and has kind of a red face. I never discussed this case with anyone except the officers or the District Attorney. I did not discuss this case with anyone outside of them with reference to my brother. I did see a man by the name of Louis Steele in the grand [fol. 222] jury. I did not discuss this case with Louis Steele outside of the grand jury. I don't believe I discussed this case with Louis Steele while I was waiting to get into the grand jury. I am positive of that. I did not discuss this case with a man named Bushkin, or called Babe. Jack Strom is my brother-in-law. He was employed by Harry

Klein in the bookie. I do not know whether he knew my business or not. I have not discussed my alcohol business with him. The last date that I have been connected with the alcohol business is the date of this bill. March, 1936. As to whether that is the last I had anything to do with the putting up of labels for alcohol, I say I never used to put up any labels at all. I don't know what you mean. I never sold any fake labels for the use of bottles which bore the inscription "alcohol." As to whether my brother Hymie Fidler did it, I do not know who you are talking about. I have a brother Herman Fidler. I do not know whether he is sometimes called Hymie. You had better ask him. I don't know whether he was associated in this liquor racket. I don't know whether he was arrested and convicted in this court. He is in business with me in River Rouge. He is the one who has the license in his name. I have seen him very often during the last five years. Strom worked for me before he went to work for Harry Klein. He did not work for me in the illegal transportation of whiskey. He was managing the soft drink bottle exchange. I believe I used to sell bottles and legitimate beer there. No labels were sold there.

Redirect examination.

By Mr. Hopping:

There were labels on the bottles of beer I sold. They are not the same kind of labels that I understood Mr. May was asking about when he was talking about fake labels. I did sell fake whiskey labels for Harry Klein, off and on for about four years. That was up to 1936. I was doing that in 1935. I used to buy the fake whiskey labels from Harry Klein and re-sell them. This was during the same time I was getting alcohol from him. I sold these labels to [fol. 223] some of the same customers that I sold the alcohol. I paid Harry Klein for these labels. I don't know what you mean when you asked if I bought them wholesale from Harry Klein. I just bought them. Five dozen at a time or ten dozen at a time.

Recross examination.

By Mr. May:

On many occasions when I bought those labels from Mr. Klein, I picked them up myself. When you asked me

before if I knew what fake labels were, I did say I don't know what they are and I repeat that answer.

Q. When I asked you before if you knew what fake labels were didn't you tell me you didn't know what they were?

A. I don't remember the question.

I do remember what happened five years ago, but as to the question that was asked me a few minutes ago, I don't recall it. I did do business with Louis Klein who is Harry Klein's brother. I bought alcohol from him and sold it. I was never prosecuted for any of these cases.

ELLIOTT, WILLIAM A., JR., called on behalf of the Government, testified as follows:

Direct examination.

By Mr. Hopping:

I am general manager of the Roadway Transit Company, with offices at 3601 Mulkey Avenue, Dearborn, Michigan. I have charge and supervision of the records of the Roadway Transit Company and have some of them here today. Government's Exhibits 7 to 13, inclusive, are photostats of the originals. I have all of the originals but one, which is Exhibit 13. It is 8/2. By that I mean our Pro. No. C-87356. For some reason the bill is lost. Exhibit 13, is however, a photostat of the original which was here at one time but must have been lost. As to Exhibits 7 through 12, inclusive, the originals are all here.

[fol. 224] The way these records are made out is that when a shipment is brought to our dock in Chicago, we have a three copy bill. One of them, which we keep, is the shipping order. We transcribe what is on the face of that on to our bill. There are four copies on a collect shipment which goes with the shipment on the truck. The yellow copy is marked "delivery receipt." That is signed by the one who receives the shipment, receives the money. That receipt shows where the shipment was delivered. Some of them show to and by whom delivered and some of them do not. It shows the date of delivery. The entry which shows to whom delivered is called on the bill consignee. That is on the right side of some of the bills and on the left side of others. The name of the consignee is transcribed from the freight bill of lading that we receive at Chicago. At the time of delivery, whoever calls for the

shipment or to whom it is delivered signs for it and our driver marks the name on the bill at the same time.

On Exhibit 7, the shipper is Rug Life Incorporated, Chicago. Consignee, Perfect Carpet Cleaners, Wyandotte Cartage, 3630 Biddle street, Wyandotte, Michigan. There are five boxes of rug cleaning fluid weighing one thousand pounds, collect shipment, \$3.80. It was delivered and sent by Wyandotte Cartage, per —, initial, on July 24th, 1936. Our driver Clark signed for it, "paid."

Exhibit 8, Rug Life, Incorporated, Chicago is the consignor. Perfect Carpet Cleaning Company, Wyandotte, Michigan, care of Wyandotte Storage, is consignee. It calls for seven boxes of cleaning fluid, collect shipment, \$5.70. Wyandotte Cartage, per—initial. Paid, B. W., our driver. It has Pro. No. C-85851.

Exhibit 9, the same consignee and consignor covers eight boxes of rug cleaning fluid, collect \$6.84. Our driver Clark received the money on July 4th. Pro No. C-84681.

Exhibit 10, the same consignor and consignee, eight boxes of rug cleaning fluid, collect \$6.38. Paid by our driver Rogers, Pro No. C-83349.

Exhibit 11 the same consignor and consignee, collect \$5.70. It is marked "Three boxes of rugs." It was picked up at the dock. Signed Wyandotte Cartage Company, per F. K. The money was paid to E. Short.

[fol. 225] Exhibit 12 has the same consignor and consignee, four boxes of rugs, collect, \$7.60. It was picked up at our dock. I cannot make out the initials or name on it. It was signed for but paid to our man by the name of Parker. Our Pro No. C-75065.

The Pro No. on Exhibit 7, which is the first one I read, was C-87356.

From the photostat of Exhibit 13, there appears the same consignor and consignee, six boxes. That's all it says. Collect, \$11.40. Will call. It was paid April 27th, 1936. Signed for by our man by the name of C. Smith. It is signed Perfect Cleaners, per some initials. Pro No. C-74482.

Mr. Hopping: Exhibits 7 through 13 have been received in evidence, with the understanding the originals would be produced. I tender the originals for comparison to counsel.

I have the originals of Exhibits 59 to 62, inclusive; I find that the photostats correspond.

Reading them in order beginning with Exhibit 62 and back to 59, is:

Exhibits 62, Pro No. C-115859, consignor, Rug Life, Incorporated; consignee, Perfect Cleaners, 3630 Biddle, Wyandotte, Michigan, 12 boxes of rug cleaner fluid, \$15.26. Signed Wyandotte Cartage, per an initial. Paid to our driver, Theil.

The next one, that is C-126049, Rug Life Incorporated, Perfect Carpet Cleaners, Wyandotte Cartage, Wyandotte, Michigan; six boxes rug cleaner fluid, \$7.63. Signed Wyandotte Cartage, per an initial. Paid to our man, Ted. That was picked up at our dock.

In each instance where the Pro number is preceded by the letter "C," it indicates that Chicago was the originating point of shipment. Where I have read Rug Life, it means Rug Life, Chicago, Illinois, was the shipper.

The next one, C-128009, Rug Life, Incorporated, consignor, Perfect Carpet Cleaners, Wyandotte, consignee, five boxes rug cleaner fluid, collect \$6.36. Signed W. C. Wyandotte Cartage, paid to our man, Ted.

C-132153, Rug Life, Incorporated, consignor; Perfect Carpet Cleaners, Wyandotte, Michigan, consignee; seven [fol. 226] boxes of cleaner fluid, collect \$9.80, W. C. Wyandotte Cartage, paid to our man, Ted.

The date on C-132153 is May 1st, 1937, on C-128009 is April 3rd, 1937, on C-126049 is March 20th, 1937 and C-115859 is January 9th, 1937.

Mr. Hopping: Exhibits 59 to 62, inclusive, were received in evidence with the same understanding. I tender the originals for comparison by counsel.

I have the originals of Exhibits 14 to 58, which are photostats. I have compared the originals and the photostats and found them to be correct.

Exhibit 14, dated November 18th, 1936, Rug Life, is consignor and Star Products, consignee. There is no address on there. It is just Star Products, Detroit. Four boxes of cleaner, collect, \$6.24. I cannot make out the signature on it. It was signed for, Rug Life, Incorporated, by—and the rest is initials, H.A.S. apparently. There is a signature which shows that this shipment was delivered to Mack Avenue. There is no address on Mack avenue on it. The signature is that of someone who received it on Mack avenue. I could not say whether one of our drivers

delivered it. Our driver apparently did not initial the bill.

Exhibit 15, C-108706, dated November 22nd, 1936, has as consignor, Rug Life, Incorporated, and consignee, Star Products, Mack Storage and Moving Company, 3454 Mack avenue, Detroit. Five boxes Renew cleaning fluid, collect \$5.04. Signed, Mack avenue Storage, per initials. Paid, Sauer, our driver.

Exhibit 16, C-108988, dated November 24th, 1936, Rug Life, Incorporated, Star Products Company, 3454 Mack avenue, Detroit; five boxes rug cleaning fluid, collect, \$6.36. Mack avenue Storage Company, paid, Sauer.

Exhibit 57, Pro No. C-109219, consignor, Rug Life, Incorporated, Chicago; consignee, Star Products Company, 3454 Mack avenue; five boxes cleaning fluid, collect \$6.36. Signed, Mack avenue Storage company, L. McKay. Paid to our driver. It looks like Fagett. This is dated November 25, 1936.

Exhibit 56, C-109431, dated November 27th, 1936, consignor, Rug Life, Inc., Chicago; consignee, Star Products [fol. 227] Company, 3454 Mack avenue, Detroit; five boxes rug cleaning fluid, collect, \$6.36. Signed "Mack avenue Storage, per—" initial. Paid to our driver, R. Levidiso.

Exhibit 55, pro C-109716, dated November 28th, 1936, consignor, Rug Life, Inc., Chicago; Star Products Company, 3454 Mack avenue, Detroit. Five boxes rug cleaning fluid, collect, \$6.36. Paid to our driver Wright. Mack avenue Storage, per, E. Stokes.

Exhibit 54, Pro C-109810, dated November 30th, 1936, Rug Life, Inc., Chicago; Star Products Company, 3454 Mack avenue, Detroit; five boxes cleaning fluid, collect, \$6.36. Paid to our driver, Wright. Signed, Mack Avenue Storage Company, E. Stokes.

Exhibit 53, Pro C-110221, dated December 2nd, 1936, Rug Life, Inc., Chicago; Star Products Company, 3454 Mack avenue, Detroit; five boxes cleaning fluid, collect \$6.36. Signed, Mack avenue Storage, per E. Stokes. Paid to our driver, R. Levidiso.

Exhibit 52, Pro No. C-110427, dated December 3rd, 1936, Consignor, Rug Life, Inc., Chicago. Consignee, Star Products, 3454 Mack avenue, Detroit; three boxes cleaning fluid, collect \$3.82. Signed, "Mack avenue Storage, per E. Stokes." No driver's signature on that.

Exhibit 51, Pro No. C-111466, dated December 9th, 1936. Consignor, Rug Life, Incorporated, Chicago. Consignee, Star Products, 3454 Mack avenue, Detroit; five boxes cleaning fluid, collect \$6.36. Signed "Mack Avenue Storage, per E. Stokes." Paid to our driver, Wyman.

Exhibit 50, Pro No. C-112218, dated December 14th, 1936. Consignor, Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; seven boxes cleaning fluid, collect, \$8.90. Signed "Mack Avenue Storage, per L. McKay." Paid to our driver, R. Levidiso.

Exhibit 49, Pro No. C-112600, dated December 16th, 1936, consignor, Rug Life Company, Chicago. Consignee, Star Products, 3454 Mack, Detroit; five boxes cleaning fluid, collect, \$6.36. Mack Avenue Storage, per E. Stokes. Paid to our driver—looks like Kalenberg.

Exhibit 48, Pro No. C-113998, dated December 28th, 1936. Consignor, Rug Life Incorporated, Chicago. Consignee, Star Products Company, 3454 Mack avenue, Detroit; five boxes rug cleaning fluid, collect, \$6.36. Signed, "Mack Avenue Storage, per E. Stokes." Paid to F. Meyers.

[fol. 228] Exhibit 47, Pro No. C-115397, dated January 7th, 1937, consignor, Rug Life, Inc., Chicago. Consignee, Star Products Company, 3454 Mack, Detroit, Michigan; five boxes cleaning fluid, collect, \$6.36. Signed, "Mack Avenue Storage, per E. Stokes." Paid our driver, Shappy.

Exhibit 46, Pro No. C-115627, dated August 18th, 1937. Consignor, Rug Life, Inc., Chicago. Consignee, Star Products Company, 3454 Mack avenue, Detroit; five boxes cleaning fluid, collect, \$6.36. Signed "Mack Avenue Storage, per E. Stokes." Our driver Bender.

Exhibit 45, Pro No. C-120395, dated August 13th, 1937. Consignor, Rug Life, Inc., Chicago. Consignee, Star Products, 3454 Mack avenue, Detroit; five boxes cleaning fluid, collect, \$6.36. Signed, "Mack Avenue Storage, per E. Stokes." Paid to our driver, C. Reskovitch.

Exhibit 44, Pro No. C-116797, consignor, Rug Life, Inc., Chicago. Consignee, Star Products Company, Mack Avenue Storage, 3454 Mack St., Detroit, Michigan, seven boxes cleaning fluid, collect, \$8.90. Signed, "Mack Avenue Storage, per Roelnstully." Paid our driver, P.R.P.

Exhibit 43, Pro No. C-117399, dated January 20th, 1937, consignor, Rug Life, Inc., Chicago. Consignee, Star Products, 3454 Mack avenue, Detroit; eight boxes cleaning

fluid, collect \$10.18. Paid Mack Avenue Storage, per E. Stokes.

Exhibit 42, Pro No. C-117829, dated January 2nd, 1937. Consignor, Rug Life, Inc., Chicago. Consignee, Star Products, in care of Mack Avenue Storage, 3454 Mack avenue, Detroit; five boxes cleaning fluid, collect, \$6.36. Mack Avenue Storage and the initials. Paid to our driver, Smith.

Exhibit 41, Pro No. C-120916, dated February 9th, 1937. Consignor, Rug Life, Inc., Chicago. Consignee, Star Products, 3454 Mack avenue, Detroit; five boxes cleaning fluid, collect, \$6.36. Mack Avenue Storage, per E. Stokes. Paid to our driver, Siesta.

Exhibit 40, Pro No. C-121072, dated February 10th, 1937. Consignor, Rug Life, Inc., Chicago. Consignee, Star Products, 3454 Mack. Eight boxes cleaning fluid, collect, \$10.18. Signed, "Mack Avenue Storage, per E. Stokes."

[fol. 229] Exhibit 39, Pro No. C-12141, dated February 12th, 1937. Consignor, Rug Life, Inc., Chicago. Consignee, Star Products, Mack Avenue Storage, 3454 Mack avenue. Seven boxes cleaning fluid, collect, \$8.90. Signed, "Mack Avenue Storage, per E. Stokes." Paid our driver, Lafitt.

Exhibit 38, Pro No. C-121649, dated February 13th, 1937. Consignor, Rug Life, Inc., Chicago. Consignee, Star Products, Mack Avenue Storage Company, 3454 Mack avenue, Detroit. Six boxes cleaning fluid, collect, \$7.63. Mack Avenue Storage, per E. Stokes. Paid, J. Novack.

Exhibit 37, Pro No. C-122622, dated February 20th, 1937. Consignor, Rug Life, Inc., Chicago. Consignee, Star Products Company, 3454 Mack avenue, Detroit. Nine boxes cleaning fluid, collect, \$11.45. Signed, "Mack Avenue Storage, per E. Stokes." Paid our driver, P. Reskovitch.

Usually a shipment billed in Chicago is delivered in Detroit the next day. The date I read is the date of delivery. On Exhibit 37, the shipment was sent on February 20th to arrive in Detroit in the ordinary course of business, on February 21st.

Exhibit 36, Pro No. C-123354, dated February 24th, 1937. Consignor, Rug Life, Inc., Chicago. Consignee, Star Products, 3454 Mack, Detroit; five boxes cleaning fluid, collect \$6.36. Signed, J. A. Vrfk.

Exhibit 35, Pro No. C-123822, dated February 27th, 1937; Rug Life, Inc., Chicago; consignee, Star Products 3454 Mack, Detroit; five boxes rug cleaning fluid, collect, \$6.36. Signed, Mack Avenue Storage, per E. Stokes.

Exhibit 34, Pro C-123871, dated March 1st, 1937; consignor, Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; four boxes of cleaning fluid in cans, collect, \$5.17. Mack Avenue Storage, per E. Stokes. Paid our driver, Preston.

Exhibit 33, Pro C-124140, dated March 2nd, 1937. Consignor, Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; five boxes cans rug cleaning fluid, collect, \$6.36. Paid Mack Avenue Storage—I can't make the initial out.

Exhibit 32, Pro C-124268, dated August 3rd, 1937. Consignor, Rug Life, Inc., Chicago. Consignee, Star Products, 3454 Mack, Detroit. Six boxes rug cleaning fluid, collect, [fol. 230] \$7.58. Signed, Mack Avenue Storage, per E. Stokes. Paid our driver, P. Reskovitch.

Exhibit 31, Pro C-124688, dated March 5th, 1937. Consignor Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; seven boxes rug cleaning fluid in cans; collect, \$8.90. Signed J. A. Zink. Paid our driver, Jacob Ward. It was delivered March 6, 1937.

Exhibit 30, Pro C-124877, dated March 6th, 1937. Rug Life, Inc., Chicago. Consignee, Perfect Guage Set Planers, in care of Wyandotte Cardage Company, Wyandotte, Michigan. Six boxes rug cleaning fluid, collect, \$7.63. Signed, Wyandotte Cartage. Paid our driver—I can't make it out. Delivered March 7, 1937.

The charge of \$7.63 on Exhibit 30 represents the freight charges for the transportation from Chicago to Detroit. There is no difference whether it is delivered to the consignee or it is "will call." It also includes pick-up from the consignor's address in Chicago if he desires it. If the consignor makes delivery himself to our dock in Chicago, he is entitled to a rebate of five cents per one hundred pounds. He has to file it in claim form. These records do not show whether the shipments wherein the consignor was Rug Life, Inc., Chicago, were delivered to our dock in Chicago, or whether they were picked up.

Exhibit 29, Pro C-125012, dated March 8th, 1937; consignor, Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; four boxes rug cleaning fluid, collect, \$5.09. Signed, Mack Avenue Storage; paid Stodie, our driver.

Exhibit 28, Pro C-125406, dated March 10th, 1937, consignor, Rug Life, Inc., Chicago; consignee, Star Products,

3454 Mack, Detroit, eight boxes rug cleaning fluid, collect, \$10.18, Mack Avenue Storage, per E. Stokes; paid Red.

Exhibit 27, Pro C-126496, dated March 24th, 1937, consignor, Rug Life, Inc., Chicago; consignee, Star Products Company, 3454 Mack, Detroit; eight boxes rug cleaning fluid, collect, \$10.18. Signed, Mack Avenue Storage, per E. Stokes. Paid our driver but I can't make out his name.

Exhibit 26, Pro C-128055, dated April 5th, 1937. Consignor, Rug Life, Inc., Chicago; Star Products, 3454 Mack, Detroit; seven boxes rug cleaning fluid, collect, \$8.90. Signed Mack Avenue Storage, per E. Stokes; paid F. Meyers.

[fol. 231] Exhibit 26, Pro C-128246, dated April 6th, 1937, consignor, Rug Life, Inc., Chicago; consignee, Star Products, Company, 3454 Mack avenue, Detroit; seven boxes rug cleaning fluid, collect, \$8.90. Signed, Mack Avenue Storage, per E. Stokes; paid L. Wood.

Exhibit 25, Pro C-128997, dated April 12th, 1937. Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; eight boxes rug cleaning fluid, collect, \$10.18. Signed Mack Avenue Storage, per E. Stokes; paid, Wyman.

Exhibit 24, Pro C-129143, dated April 13th, 1937; consignor, Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; six boxes rug cleaning fluid, collect, \$7.66. Mack Avenue Storage; paid Wood.

Exhibit 23, Pro C-129642, dated April 16th, 1937; consignor, Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; five boxes rug cleaning fluid, collect, \$6.36. Paid Preston, signed J. Z.

Exhibit 22, Pro C-129934, dated April 19th, 1937; consignor, Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; six boxes rug cleaning fluid, collect, \$7.63. Signed Mack Avenue Storage, per E. Stokes; paid our driver, J. Harris.

Exhibit 21, Pro C-130695, dated April 23rd, 1937; consignor, Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; six boxes rug cleaning fluid, collect, \$7.63. Signed Mack Avenue Storage, per E. Stokes.

Exhibit 20, Pro C-131039, dated April 26th, 1937; consignor, Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack Avenue, Detroit; six boxes rug cleaning fluid, collect, \$7.63. Signed, per E. Stokes; paid our driver, J. Kovacs.

Exhibit 19, Pro C-131813, dated April 3rd, 1937; consignor, Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; seven boxes rug cleaning fluid, collect, \$8.90, initials C. N. G.; paid—I can't make out the name.

Exhibit 18, Pro C-133375, dated May 11th, 1937; consignor, Rug Life, Inc., Chicago; Star Products, 3454 Mack avenue, Detroit; four boxes rug cleaning fluid, collect, \$5.09; Mack Avenue Storage, per E. Stokes; paid, Preston. [fol. 232]. Exhibit 17, C-133574, dated May 12th, 1937; consignor, Rug Life, Inc., Chicago; consignee, Star Products, 3454 Mack, Detroit; two boxes rug cleaning fluid, collect, \$2.54. Mack Avenue Storage, per E. Stokes. Paid, Preston.

Government's Exhibits 176 to 188, inclusive, are photostats of the records of the Roadway Transit Company, the originals of which I have. They are similar to the records I have just been reading.

Exhibit 176, Pro C-217099, consignee, Star Rubber, J. E. Johnson, 6011 Twelfth, Detroit; consignor, Rug Life, Inc., Chicago; six boxes rug cleaning fluid, collect, \$9.45, dated October 21st, 1938. Signed, J. E. Johnson, per J. Beschel. Paid our driver, Preston.

Exhibit 177, Pro C-208845, consignor, Rug Life, Chicago; consignee, Star Products, J. E. Johnson, 6011 Twelfth, Detroit; dated September 15th, 1938; six boxes rug cleaning fluid, collect, \$9.45. Signed, Star Products, Mat Wilson. Paid our driver, J. DeDunn.

Exhibit 178, Pro C-205027, consignor, Rug Life, Inc., Chicago; consignee, Star Products, care of J. E. Johnson, Inc., 6011 Twelfth street, dated August 29th, 1938; six boxes rug cleaning fluid, collect \$9.45. Signed, J. E. Johnson, paid Scheckel.

Exhibit 179, Pro C-193326, consignor, Rug Life Inc., Chicago, consignee, Star Products, care of J. E. Johnson, 6011 Twelfth street, dated June 16th, 1938; six boxes rug cleaning fluid; collect, \$9.45. Signed J. E. Johnson, per J. E. J. Paid, Elliott.

Exhibit 179, Pro C-192129; consignor, Rug Life, Inc., Chicago; consignee, Star Products, J. E. Johnson, Inc., Detroit. Dated June 9th, 1938; six boxes rug cleaning fluid, collect, \$10.20. Signed, J. E. Johnson.

Exhibit 180, Pro C-188187, consignor, Rug Life, Inc., Chicago; consignee, Star Products, care of J. E. Johnson, Inc., 6011 Twelfth street, Detroit; dated May 17, 1938;

six boxes rug cleaning fluid, collect, \$9.45. Paid Scheckel, signed J. E. Johnson, per E. V. W.

Exhibit 181, Pro C-181412, consignor, Rug Life, Inc., Chicago; consignee, Star Products, care of Johnson, Inc., [fol. 233] consignee, 6011 12th street, Detroit, dated April 2nd, 1938; six boxes rug cleaning fluid; collect, \$9.45. Paid Preston. Signed, J. Smith.

Exhibit 182, Pro C-180709, consignor, Rug Life, Inc., Chicago; consignee, Star Products; will call, Detroit, dated March 29th, 1938; six boxes rug cleaning fluid, collect, \$9.45. Signed, Star Products, J. Beschel; will call.

Exhibit 183, Pro C-176627, consignor, Rug Life, Inc., Chicago; consignee, Star Products Company, care of J. E. Johnson, Inc., 6011 12th street, Detroit; six boxes rug cleaning fluid, collect, \$8.55; signed James Allen.

Exhibit 184, Pro C-174953, consignor, Rug Life, Inc., consignee, Star Products, care of J. E. Johnson, Inc., 6011 12th street, Detroit.

Q. Would you read the date among the first things you read, please?

A. Yes, sir. Date, 2/15/38; six boxes rug cleaning fluid, collect, \$8.55; signed J. E. Johnson, delivered 2/16; paid J. DeDunn. Exhibit 185, dated January 11th, 1938, Pro C-170020, consignor, Rug Life, Inc., Chicago; consignee, Star Products, J. E. Johnson, 6011 12th street., Detroit; seven boxes rug cleaning fluid; collect, \$7.98. Signed J. E. Johnson Cartage, by J. Beschel; paid J. DeDunn; Signed January 12th.

Exhibit 186, dated January 5th, 1938, pro C-169179, consignor, Rug Life, Inc., Chicago; consignee, Star Products, care of J. E. Johnson, 6011 12th street, Detroit; six boxes rug cleaning fluid in metal cans, collect, \$8.55, initials, J. E. J.; paid J. Kovacs.

Exhibit 187, dated November 17th, 1938, Pro C-222906; consignor, Rug Life, Chicago; consignee, Star Products, J. E. Johnson, 6011 12th street, Detroit; six boxes rug cleaning fluid; collect, \$9.45. Signed J. E. Johnson; paid.

Exhibit 188, dated November 9th, 1938, pro C-221317; consignor, Rug Life, Inc., Chicago; consignee, Goddard Products, J. E. Johnson, 6011 12th street, six boxes rug cleaning fluid; collect, \$9.45; J. E. Johnson, per J. Beschel; paid, Howe.

[fol. 234] Cross-examination.

By Mr. Cavanagh:

I could not say whether any of these shipments represented by any of these records were delivered at Chicago or whether they were picked up by our equipment. The shipments were delivered by our equipment in Detroit or Wyandotte. The deliveries that went to the Mack Avenue Storage was delivered by our equipment. We do not maintain an establishment in Wyandotte. We deliver direct from Detroit. We have the same driver on our equipment that makes that run. It was the same driver nearly always during this particular period.

Exhibit 31, which refers to cans, was boxed. Exhibit 34 also refers to cans. Our company always transported the cans of rug cleaning fluid in boxes. Reference on those exhibits to cans is an error because it says, "four boxes, rug cleaning fluid, in cans." The information on these exhibits was obtained from shipping orders. Therefore, this was obtained at the point of shipment from those original shipping orders. To my knowledge, our employees in Chicago did not make out these original shipping orders though they could have. I do not know who delivered them to our dock in Chicago. It is the practice in our particular trade for our dock foreman or clerk to make out shipping orders and bills of lading.

There is a change of rate. It was 38 cents on some, and 53 cents on others. In 1936 when they first started billing them, there was a dispute as to what was in them. We could not get a rate classification for it. Subsequently, we learned cleaning fluid took a classification. At any rate, 53 cents was finally the rate that was established on the article. This was done sometime in 1936. There was nothing about these shipments that raised any suspicion in our mind as to their contents. The reason for increase in rate or classification was that they were classifying them in different ways on the bills of lading. Pretty hard to remember what the whole thing was over. According to the billing, all these shipments of cans were in boxes. I never made any inspection as to the contents of the boxes. It is not customary in our business to make such [fol. 235] inspection. There was nothing about the shipments which would cause any suspicion. I did not learn

the contents of these boxes until after the whole thing was brought to our attention, which was the later part of 1939.

From Exhibit 11, it appears that one box of rugs was delivered. On it says, three boxes of rugs. I do not know what that shipment consisted of other than what it says on the bill. That shipment had a different classification or rate.

As to Exhibit 13, there isn't any classification of commodity. That shipment took the 76 cent rate, the same as Exhibit 11. Apparently the rate clerk took it for the same kind of material as was shipped before. Our office never had occasion to verify or confirm the location of the Rug Life, Inc., at Chicago, nor the Star Products Company at the Mack Avenue Storage. I personally do not know the circumstances surrounding the delivery of the shipments to the Mack Avenue Storage Company. It is not unusual for shippers to deliver merchandise to our docks. None of these bills were made under my supervision.

Cross-examination.

By Mr. Frederick:

The question relative to the classification of these shipments was raised more or less in our own organization. We did not discuss it with the shipper or its representative. The pencil notations which appear on the back of the exhibit bearing Pro No. C-112218, were placed there by our pick-up man, named Levidiso. He used the back of this bill, after making his deliveries, to write his pick-ups on. That has nothing to do with the shipment appearing on the front of the bill.

Re-direct examination.

By Mr. Hopping:

I have a bill for which there is no photostat. It is a record of the Roadway Transit Company. That was the bill of lading handed us in Chicago. That is a copy of it. The bill of lading is Government's Exhibit 189, and the [fol. 236] delivery receipt is Exhibit 190. We transported that shipment to Toledo from Chicago. The consignor was Rug Life, Inc., the consignee, Mayfair Cleaners, Will

Call, Toledo, Ohio. The records show that on April 21st, 1937, we received a shipment at Chicago from Rug Life, Inc., going to Mayfair Cleaners, Will Call, Toledo, Ohio; seven boxes rug cleaning fluid, 1750 pounds, with our stamp on it. The initials S. L. Our bill of lading was then made up off of that on to C-130322, dated April 21st, 1937, with the Rug Life, Inc., consignor, and Mayfair Cleaners; Will Call, Toledo, Ohio, consignee; seven boxes rug cleaning fluid, 1750 pounds, rate 53, collect, \$9.28, signed Mayfair Cleaners, per F. C. on April 22nd, by Eastside Cartage Company, which are agents at Toledo.

Mr. Hopping: I offer in evidence Exhibits 189 to 190, Exhibits 14 through 57, Exhibits 176 through 188, Exhibits 59 through 62, Exhibits 7 through 13.

Mr. Frederick: I wish to note an objection to the introduction of all the exhibits on the ground that there is not shown the materiality in connecting up with the defendant with the crime here charged.

The Court: Objection overruled.

Mr. Frederick: Exception.

Mr. Fischer: And the same exception as to the defendants Stevens and Barrett and further objection that the identification as shown by this witness is not to the probative value of even the documents, inasmuch as they were not prepared under his direction but only partly under his control.

The Court: Overruled.

Mr. Fischer: Exception.

The Court: They may be received.

[fol. 237] SHORT, EARL, called as a witness on behalf of the Government, testified as follows:

Direct examination.

By Mr. Hopping:

I am dispatcher at the Roadway Transit, at Cleveland, Ohio. I have charge of certain records of the company, including all delivery receipts for shipments. I have been in my present position for the past five years. I did receive a subpoena to produce certain records here. I identify each of the sixty papers as records of the Roadway Transit Company, made in the ordinary course of business at Cleve-

land, Ohio. I did not make them out. They are made out in Chicago but kept in the office where I am employed. They were received by me in the ordinary course of business. They are delivery receipts for shipments made from Rug Life, Inc., to Goddard Products Company, at Cleveland, "Will Call." I saw the shipments represented by these delivery receipts. I also saw the persons to whom they were delivered. They cover the period of time from January 14th, 1938 to June 13th, 1939. They were delivered to a man I see in the courtroom, Mr. John Carbaugh, Sr. The shipments had named as consignee the Goddard Products Company, no address, just "Will Call." Mr. Carbaugh came with his truck, picked them off our dock. Where he delivered them to I do not know. We received payments from him for the shipments. The merchandise is all described as rug cleaning fluid. Rug Life, Inc., is the consignor in each case. These tickets represent approximately sixty separate shipments labeled rug cleaning fluid, from Rug Life, Chicago, consigned to Goddard Products, Cleveland, and delivered as they came in, to John Carbaugh.

The only person I ever saw with John Carbaugh was his helper, who is a man sitting here. I do not know his name.

The bundle of exhibits consisting of sixty sheets was marked as Government's Exhibit 191.

[fol. 238] The sheet I have in my hand is a summary of the tabulation of the delivery sheets, except there are two I could not find. The two that are not in Exhibit 191 are Nos. C-199283 and C-204116. The shipments were approximately the same poundage. There are different colored sheets. This one marked C-187125, Mr. Carbaugh evidently took our delivery receipt for his copy. In other words, we got the consignee's memo. The wrong one. On the other, No. C-186454—there is five copies on these freight bills. The two ones which are white, and a blue on a collect shipment. Mr. Carbaugh should have taken those two tickets. He did not take them so I left them right together. In other words, he should have had these two copies for his memorandum of payment. On this delivery there are three carbon copies in the bundle.

Mr. Hopping: I offer in evidence Exhibit 191.

The Court: I think counsel should have an opportunity to cover this, and then I would suggest you do it together,

so that when you get through, you can read into the record the total amount of poundage transported, from where to where, within a given period of time, giving the date. You want this witness to remain here. You may want to cross examine him on some of them.

Mr. Frederick: Yes, your Honor.

Mr. Hopping: I will ask him to step down for the present.

The Court: Yes.

CARBAUGH, JOHN, SENIOR, called as a witness on behalf of the Government, testified as follows:

Direct examination.

By Mr. Hopping:

My home is in Cleveland, Ohio, 1640 E. 60th street. I have lived in Cleveland, twenty-five years. I have been in the building trade until the last six years when I went into the cartage business. I am a defendant in this case and I plead guilty to the indictment.

[fol. 239] I did receive some shipments from the Roadway Transit Company dock in Cleveland, from the Bug Life, consigned to the Goddard Products Company in Cleveland. I saw the delivery receipts from the Roadway Transit. I did receive the shipments and signed for them as represented by these sheets. I did not sign them in the name of Goddard Products. I just signed my name, John Carbaugh.

I transported these shipments to places in and about Cleveland. I am pretty sure the first shipment I received was on January 14th, 1938. On that date, I went to the dock of the Roadway Transit. The shipment was crated in, I think, six or seven wooden boxes. I made a slip delivery of them. I delivered part of them one place, and part another. The first part of that shipment was delivered off of 152nd and St. Clair, in a single car garage, in Cleveland. I do not know who operated that garage, nor did I see anyone there when I left them. The other part of the first shipment was delivered to 81st, off of Euclid. I do not know who occupied these premises, nor did I see anyone there.

There were approximately 58 or 60 shipments from that time until sometime in June, 1939. The shipments varied a little. There were not over nine or ten boxes. I did

not continue delivering them to the same places. I delivered three or four loads to the address I just told you, that is, upper St. Clair, at 152nd street, and then I delivered some of them into the garage, back of the apartment house on 81st street. Then I took them out on Woodland avenue, to another public garage. I think it was around 139th or 140th street on Woodland. I do not know who operated that garage. I saw the people there that had me haul it, but I did not see the garage owner. I never got the names of the people that had me haul it. I did not know them by any name, just their face. There were two people that hired me.

I recognize Government's Exhibit 161 as the picture of one of the men who hired me. I never learned his name until after I quit hauling. That is, after I saw his picture. His name is Johnson. I never heard his first name. [fol. 240] I only made three deliveries to Woodland avenue and 131st street. It was two or three.

Exhibit 192 is a picture of the other gentleman that hired me to make these deliveries. I did not know this man's name at the time I was working for him. I have since learned it. Throughout the time I delivered these shipments, I was working for the man whose picture is Exhibit 161, and the man whose picture is Exhibit 192.

Other than the three places mentioned, I made deliveries to a farm building on S.O.M. Center Road and Maple Heights. There was an Italian family lived there. I did know the name of the man in the place but I could never remember it very well. I always knew the people when I took it in and delivered it, but I could not tell one from the other. That is, which one was really running the place. I saw two men there. I made quite a lot of deliveries at the farm on S.O.M. Center Road. Probably half, or more than half of those that I hauled. Tony was the name of the brother-in-law that I delivered to, and I can't think of the other one's name. The place they were living on was going to be wrecked. They rented another farm close to it and moved to the other building. Then I took the stuff to the other building. I delivered to this other building about four months. I can't think of the road this other building was on. It was right beside the S.O.M. Center Road. After delivering to that place for four months, I did not deliver to any other place. I did not go back to the places where I delivered these shipments, only to pick

up the empties. I would take them to a cartage company to send them back to Chicago. I took them to the Norwalk Truck Line in Cleveland. They were just empty wooden boxes. I see that box in the courtroom which is the size box, but I don't know whether it is one of the boxes or not. They were of similar construction. The boxes I received were addressed to me toward the last part but the first part, they don't have my name. Mr. Bagdonas asked me if they could use my name so they would know who was getting the stuff to pick it up. I said I did not see any objection to that. They stenciled it outside of the boxes then so that anybody could see it. I did not know they were going [fol. 241] to do that at the time. I wasn't caring. I did not know what they were doing. Some of the empties I picked up had my name stenciled on them. When I took them over to the Norwalk Truck Lines, either Bagdonas or Johnson, or both of them, made out the bills. I do not know in what name they shipped them. I did not see them make out the bills of lading. They said they would meet me at the Norwalk dock and we would take them down, unload them, and drive away. I think I delivered empty boxes to the Norwalk Truck dock four times. I don't know the dates. Reference to Government's Exhibit 170 does not help me remember when I delivered the empty boxes to the Norwalk Truck Lines. I can't make it out. The top line has the date November 11th, 1938. I can't say whether it was before or after that date. I did not pay any attention to it. I know every time I took them down there it was pouring rain and I was glad to get them unloaded and get away, but the date, I could not qualify. It was at the beginning of the time that I was receiving these shipments from the Rug Life that I did this.

Exhibit 193 is a picture of the Tony I spoke of at the farm. He is the one I delivered part of the shipment to.

Exhibit 194 is the other one at the farm. I heard his name but I don't remember it. This is Benny Ware, the helper on my truck. He is sitting in the courtroom.

Cross examination.

By Mr. Frederick:

I don't remember the date I entered a plea of guilty to this indictment. The records show it to be February 5th, 1940. I have not been sentenced under that plea of

guilty as yet. I plead guilty to hauling the alcohol, the fluid, or whatever. I hauled it. I plead guilty for hauling the stuff away from the Roadway. As to whether I plead guilty to conspiracy, I guess it would be. I was not advised before I plead guilty. I did not have the indictment explained to me. My understanding was that my plea of guilty was to hauling this alcohol. No one asked me to plead guilty. No one made any threats or promises [fol. 242] to me. I was subpoenaed to appear as a witness in this case. I first knew it last week. I did not know I was going to be a witness in this case at the time I entered the plea of guilty. I did not discuss that fact with anyone. I have been in the general cartage business in Cleveland for the past six years. The shipments shown by the waybills here are the only shipments I have hauled from the Roadway Transit dock. I am a furniture mover. This is a little out of my line.

I was first approached with reference to hauling shipments from the Roadway Transit dock, on January 14th, 1938. I kept the date. I made a notation. I kept a memorandum of it. I did not keep a memorandum of all my shipments. Just on those lawful, necessary. I did not know on January 14th, 1938 that this was an unlawful shipment. I did not make a notation of this shipment at that time. I didn't for some time after that. It was probably a month or so later. I happened to figure back to when we started delivering that stuff. I only expected to make one delivery. I made the notation a month or so later when it commenced to come in every week. I just happened to figure back to see whether it was coming in on the same day of the week. The reason I did that was because so I could tell what day of the week I could expect it in. It came in mostly on Fridays. That's not true of all of these shipments. Sometimes it was a day or so late. Maybe early. I know now it was mostly Fridays. That was not the reason it was necessary for me to make a notation. There was no reason to keep a specification on it. I just kept it in mind so I would know pretty near whether the truck would be in or out when I would get the bill of lading to go after it. I did not write down a notation. I kept a mental notation. The first time I was asked that date was today. I remember the first shipment was January 14, 1938. I have had no means of refreshing my memory before today. On January 14th, 1938 I was not

doing anything else. I did not have any other shipments on that date. I had no other business except hauling six or seven boxes. It was in the afternoon that I did this. In the morning I sat around waiting for something to come in to do. I had no notice before afternoon that I was going to haul these shipments. I was by the side of my truck, [fol. 243] in front of the house, when two gentlemen walked up and asked if that was my truck. I said yes, and they asked if I was available to haul a little freight. I said I am doing nothing else. They then told me about some stuff in the Roadway. A few boxes. Told me what they weighed and asked if I would deliver them. I said "I sure will." They did not tell me what it was. These gentlemen were the ones I have testified that I later learned to be Johnson and Bagdonas.

As to when I learned their names to be Johnson and Bagdonas, I never heard it. I heard the names once or twice but I did not know one from the other. I could not identify them until after my shipments stopped coming in. I have identified the pictures, one as being Johnson and the other as being Bagdonas. I learned their names after I saw the pictures. I first saw the pictures in the Federal Building in Cleveland. It was at the time I was taken in for questioning with reference to this case. It was sometime along that time. I think I was then told their names. That was not the first time I had been told their names. Prior to that day, the boys at the farm asked me when I saw them last. They called him Bagdonas. I did not know which was which so I said, "Who do you mean, the young fellow, or the old man." When I said I do not know one from the other, they said the other ones name is Johnson. I did not know their first names at that time. That is the only time I ever heard their names. At the time I was shown the pictures of these men in Cleveland, I was not asked about any shipment. They asked if I knew what I was hauling. I do not know whether they asked me or not about the first shipment I hauled for these two men. They did not ask me how many shipments I hauled for them. I suppose they did ask me when and where I first saw them. I told them they came in front of my door, in front of my home. I do not know whether I told them when.

As to whether I told them it was on January 14th, 1938, I don't think we went into that kind of details. I

don't think they asked that. On January 14th, 1938, I did nothing in the morning and was waiting around my [fol. 244] house in the afternoon when these two men came on. As to what time in the afternoon, I kept no time of it. I was idle. My son and I were around when they came up and asked us about it. My son assisted in delivering that shipment. He also assisted in delivering some of the other shipments. I could not say how many. I suppose I delivered about thirty-five, maybe forty. I don't know how many of those my son assisted on. As to how many Ware assisted on, I could only say, whenever I needed someone to go along, I went after him. I don't know how many times. My boys went to school. When they were home, they would go along. When they were not home. I would get someone else. I would get Mr. Ware whenever I could not get my son.

I could not recall what business I transacted or what I did on January 15th, 1938, the day following the first shipment. As to what business I transacted on January 13th, I did not keep that kind of record of the past days. This was such an outstanding event that I have a mental note of the exact day because we talked it over. I did not do anything the day before or the day after that shipment. I had no work to do on either the 13th or the 15th. I could not say how soon after the 14th I did have any other work to do. In the moving racket you only get a few days a month or a week. I keep busy in the moving racket three or four days a month. I have no other means of income. It was not true in January, 1938, that only two or three days a month was taken up with the moving business. In January, or the winter months, moving is not worth speaking about. I did not do more than three or four loads of moving in January, other than these boxes. As far as I know, I did not in February either. My income from the cartage business per month is not worth talking about. By that I mean, it is your bread but it is not your butter. I have never estimated how much. I have been in the cartage business six years and I have never estimated how much my monthly income from that business is. I received an average of \$4.00 for hauling those shipments of boxes. That was the price agreed upon on the first occasion, January 14th, 1938. I don't know which one [fol. 245] of the men paid for the first load. It was paid to me the same day, before I moved the shipment. I had the

waybills to present at the dock to pick up this group of boxes. These were given to me at my home before I went down to the Roadway. One of the two men told me where to make the delivery. I do not know which one. They were both together. I did not keep it separate to find out which one was giving me the instructions. They were both together and I did not pay any attention which one was boss, which paid the money or which did not.

It is not true that this is so important an occasion that I remember it now, more than a year later, for the first time as being on the day I said. This is not the first time I remembered the date as being January 14th. If I have forgotten it, I would not have recognized it here today. As to what time I got through making the delivery on January 14th, I can only say I was not working by the hour. I did not set the time. It was in the afternoon. In the evening. It was not after dark.

The first delivery was made off 151st on St. Clair, and off of Euclid. That was the address given to me but it was not given to me in those words. I met the people there. They were waiting for me and they had unlocked the garage and put it away. That was off St. Clair and 151st street. As to how I knew what house to go to off of St. Clair, I pulled up 152nd street. When I got there, one of them stepped on the running board of my truck, stood there and rode back to the garage and showed us to pull in the alley in the garage to unload. That was the oldest one of the men I was working for, Bagdonas. I do not know the address of the garage. I made delivery of three and one-half shipments to that garage. That is, I went to the garage four times. As to how I knew how to get there on the other three times following the first shipment, "I ain't so dumb." I got there once, I can go back all right. There was no street number to it. I knew it by the garage in the alley. It is a garage in the rear of a residence. It was a light colored garage. A light gray colored garage. As to whether it was the only light gray colored garage in the block, I did not look it over.

There were men in the garage on the following three times that I made delivery. I was the man who furnished [fol. 246] the key to unlock it. His name is Bagdonas. He met me there on each occasion. I don't know whether he lived there or not. I received my orders to make the three following deliveries the same as I got the first one.

They told me they had another load and asked me to make a delivery, and most of the time paid me before making the delivery.

The second load was delivered about a week after the first. I didn't keep any other account of the dates from that time on. The following deliveries were about a week apart. The occasion that prompted my making delivery to another address than this garage, was that they told me somebody broke into the garage. This conversation took place at my home.

The second place I made delivery was on 81st off of Euclid. I was told there was an arch in the driveway; to pull through under the archway in the back and the man would be there to show me what garage to unload it in. It was an archway front and driveway leading into a house. That was supposed to be on 81st between Euclid and Carnegie. I drove under the arch and saw Bagdonas.

I first learned that these articles I was delivering contained alcohol after I was through hauling. It was about a month or six weeks after I quit. In June or July, 1939. The way I learned it then was that the Federal Agents came around and asked me if I had been hauling some stuff from the Roadway and I said yes. The Federal agents were the first to tell me. Before that, no one told what was in those boxes. I did ask the people I was working for and they told me it was cleaning fluid for cleaning rugs. The boxes indicated it to be cleaning fluid.

The two men on the farm are related. One of them was named Tony. That is the farm to which I made the deliveries. The other man was Tony's brother-in-law. I knew that because I moved them from one farm to another. I never learned their full name. The registration of the moving was not required because this was not in Cleveland but out in the country. The people on the farm paid me for the moving. I did not become well acquainted with them. I did not move them during the same time I was [fol. 247] delivering the boxes to them. It was after that. It was during the time I was delivering these boxes to their farm that I moved them. The arrangements to move them was not made upon one of the occasions that I delivered the boxes. I moved them on another occasion. The arrangements to move them was made while I was unloading the cartons at their barn. I did not deliver

over ten boxes at one time to their farm. I did think it was an awful lot of rug cleaning fluid to deliver to a farm but that was none of my business. I never asked him if he was in the business of selling rug cleaning fluid. I did, and do know what business he was in other than farming. I was not told by him and never asked him. I didn't ask him during the time I was delivering these boxes what he was doing with all this rug cleaning fluid. I did not inquire of any of the other people to whom I delivered. I asked the men who hired me if they were in the business of selling rug cleaning fluid and they told me they have agents working for them. They did not say where their office was though I asked them. They just made no reply to my question. They told me to deliver out to this farm. I did not ask Johnson and Bagdonas if they had moved their headquarters to the farm. I did not ask Tony or his brother-in-law if they were working for Johnson and Bagdonas. So far as I know, I never saw the defendant, Braverman. The only two men I had any association with in the delivery of these shipments were Johnson and Bagdonas. I have not seen Tony or his brother-in-law since my arrest. I do not know whether they were arrested in this case or not.

Cross-examination.

By Mr. May:

I am old enough to have better sense. I am fifty-five. I have two children. I have never been in trouble other than in this case. When these men came to me and talked about this case, I did not know that it was an illegal business they were in. I never learned that it was wrong until the time the government officers questioned me. I just thought I was hauling this in the regular trucking [fol. 248] business. It could have been more than thirty-five trips I made. It could have been more than forty. It was over a period of a year and a half and averaged about a load a week. Sometimes it would drop for two or three weeks. Then it would double up on me. I got \$4.00 for the first load. After that business picked up, they were shipping more boxes and they would pay me more money. If I took ten boxes, I would get about \$6.00. That was not an unusual charge for that amount of boxes, considering their weight. I never counted up how much I

made on the whole deal. It would be in the neighborhood of \$200.00.

I was arrested in Cleveland. I was not released on bond in Cleveland. I was released on bond up here. I was never placed under arrest in Cleveland. I came to Detroit and was released on bond. I was released on personal bond. I never discussed this case with the officers. I did tell them I have hauled it. I did make a statement to that effect. None of them have yet said they would do anything for me if I testified. While I did not know what was in the boxes, and had no part in the illegal business, I plead guilty because I hauled it. I did not know what it was I hauled. I was guilty anyhow. I feel as if I was guilty even though I didn't know it was an illegal business. Though I didn't know I was hauling anything illegal, I was guilty. I was there and though I had no guilty knowledge, I am guilty. The indictment I plead guilty to contains seven counts but I can't help that. It does charge me in each count with having conspired with twenty different men to have done an illicit business. I can't help it. I got in wrong. The indictment charges me in the first count with being part of the conspiracy that carried on the business of wholesale and retail liquor dealer. In response to your question whether I know it, I say I can't help it. I didn't sell any of it. I hear now that I am charged with it. No one told me that until now. This is the first time I heard about it. It does say in the first count that I conspired with a number of people to have done certain things. "It looks bad, doesn't it." Though the first count contains eighteen overt acts, it can't be [fol. 249] helped, I guess. I plead guilty to that. I know I plead guilty to the second count which charges me with conspiring with twenty other men to feloniously possess distilled spirits in violation of the Internal Revenue Laws. I have no guilty knowledge of what was in those cans. No one ever read this indictment to me. I think the government agents told me that I was charged with transporting some illegal spirits. I never did anything wrong in my life as far as I know.

Cross-examination.

By Mr. Fischer:

Q I plead guilty in this court. I do not have a lawyer. I consulted a lawyer in Cleveland after I was indicted. I

met the lawyer at my home. A grocer who had a store beside my place sent him over to me. I could not afford to pay him any money. That is why I plead guilty. I did not have any money to pay a lawyer.

Most of the merchandise after the first shipment was consigned to me. The first part of it was not consigned to anyone in particular. It was just marked, Rug Life, from the Carter Manufacturing Company. Later they asked me to let them ship it in my name so that I could call up the Roadway and find out if it was in. I consented, so the waybills came to me. My name was on them. I have not any of the waybills with me. When I would unload the boxes, I would fold them up and leave them on top of the boxes in the garage. The names of the men I delivered the merchandise to were not on the waybills. They told me they were representing the Rug Life and any shipment that came to Rug Life, I would turn over to them. I signed my name in order to show the company that the goods were picked up by the Roadway. I never read any of the documents I signed. I never picked up merchandise for anyone else at this dock. Rug Life was the only company mentioned. I have heard of the Goddard Products Company. I didn't hear of it but I think that was stencilled on a couple of the boxes at the start of it. I never heard from anyone or read anything about [fol. 250] the Goddard Products Company. No one spoke to me about this company. I don't know Bert Young. He never worked for me. I never authorized anyone else to sign my name for these shipments. I went down to the Roadway thirty-five or forty times in all. Though the documents contained in Exhibit 191 reads Goddard Products Company, as consignee, I never looked at it before. I just signed it and brought it out after I paid them the money. I never read the name, Rug Life, or anything else on any of those exhibits, at any time. I got a copy of the delivery receipt, I signed and left it with the boxes. I did not mean I did that with the waybills. I turned the waybills over to the Roadway. I would take one slip and leave that with the merchandise I got. There was nothing exceptional about this transaction. I did not think it peculiar that I was to deliver this to the farm. The men I delivered it to were living on the farm during the entire period. I was making deliveries. The farm was in operation also. The wife and children were there. I put this

into a barn. There was nothing else there besides farm produce. I did not ask why they wanted that delivered out there.

I delivered to 52nd off of St. Clair besides the other two places, that is, at the farm and the 81st street address. There it was just a single garage behind a home. It was about 12 by 18 by 20. I do not know how many people lived in the home. It was a fair sized place. I never met this Italian family before I delivered the merchandise out there. I don't know whether it was Tony or his partner who was the first to tell me that the man's name was Bagdonas. I don't know which one I was talking to at the time. They asked me when I saw him last, when he was coming out, or something like that. The money was left at my place and I had not seen him.

The only receipts I took from the ones for whom I was working was my pay. There was nothing unusual about these shipments except that on one lot there was a leaky can. That was around toward the last of the shipments. About eight or ten shipments back, one can leaked. I turned it over and the Roadway asked me the extent of damage [fol. 251] done. I didn't see it open. I turned it over so it would not leak. I told the people I was working for and asked if there was any damage. They said, "no," they would stand their own loss. It was bad capping. I told the Roadway that and that's all I know of it. I know there was no damage paid. They just made light of it. This occurred around the latter part of April. The leak occurred on the platform of the dock. I spoke to the shipping clerk at the Roadway.

I have been present in court all day and saw a man here who was at the Roadway dock at that time. I do not know if he is in court now. About a quart leaked out of the can. It was a heavy odor. It smelled like alcohol to me, but it smelled like, it could be benzol or benzine. There was nothing suspicious about this smell. I have smelled benzol before. This smell was similar to it. You could not see these cans in the boxes. I stopped this leak by turning over the box. I never saw the cans. I knew there were cans in the boxes though I didn't see them. I could hear the cans and the solution slopping but I could not see any signs of stamps when it had a lid over it.

I have not seen Bagdonas or Johnson since I have been in the courtroom. The last time I saw them was when I got paid for the last pick-up. They gave me the money that I paid for the shipment before I picked them up. That was for the freight.

Cross-examination.

By Mr. May:

I signed my name on all the documents at the station. I never signed any other name. This man Ware went down with me when my sons were not around. I know he has been indicted too. I paid him for helping me while he was driving. I paid him approximately \$1.00 each time. I never discussed the contents of the shipments with Ware, nor with my boys. My boys were not made parties to this case. The one who was subpoenaed was questioned by the government agents. I received a subpoena to come to court in this case. Ware did talk to these men that employed me. I always paid Ware. They did not pay him [fol. 252] direct. I imagine Ware accompanied me on about fifteen of the trips. He made approximately \$15.00 out of the whole thing besides a little tip money. My signature appears on Exhibit 161.

Re-direct examination.

By Mr. Hopping:

My signature appears on each of the documents in Exhibit 161.

Mr. Hopping: Exhibit 161 is offered in evidence, if your Honor please.

The Court: That is the—

Mr. Hopping: A series of delivery receipts of the Roadway Transit Company, signed by—

The Court: What is the number of it?

Mr. Hopping: 161.

The Court: Any objection?

Mr. Fischer: That is the one, if the Court please, we were going to agree to, a lot of tabulating.

The Court: Yes, they have been offered before, and I said I would wait until you gentlemen went over them and tabulated them.

Mr. Hopping: I understood that was with respect to reading them, but I do want them received while this witness is here.

The Court: He has identified them, hasn't he?

Mr. Hopping: Yes.

The Court: Yes.

The Court: There is no question about the identification.

Mr. May: No, sir. He says he signed them, and we all agree on it.

Mr. Fischer: I think we can agree to receive all of them.

The Court: Suppose I receive them subject to the arrangement we have made, so that, in the event this gentleman is gone, the Government would not have to bring him back to identify them.

Mr. May: We wouldn't want that. So far as he is concerned, we are through with the Exhibit,

[fol. 253] The Court: I will receive them subject to that arrangement, that you gentlemen go over them, and if you have any objection to them, I will hear you.

On or about the third occasion, they told me the place had been broken into and that was why they were moving. I don't know any fact about it. They told me that some of the stuff was hijacked and they were going to get another headquarters, and that was the reason they sent me to the farm. I don't know whether it was Bagdonas or Johnson that told me that, though both of them were there at the time.

I have not driven an automobile myself for years. That is the reason I took Mr. Ware or my son so they could do the driving. That is because I do not see very well.

I was the consignee on some of the boxes that came to Cleveland. They billed to me. They used my name on the outside of the boxes so that it would come to me. I picked them up and delivered them to these people.

Mr. Hopping: Your Honor, I would like, first to tender a stipulation with counsel for one of the defendants with respect to some documents which I will mark as exhibits at this time, and have marked Exhibits 195, 195-A, through Exhibit 207-A.

(Thereupon, Exhibits 195, 195-A, through Exhibit 207-A, inclusive were marked Government's Exhibits, by the Reporter.)

Mr. Frederick: The stipulation is that Exhibits 195 and 195-A through 207 and 207-A, inclusive, are telegrams and Western Union money orders payable to Eva Braverman with addresses thereon, some of which bear the address—

The Court: What are they? Drafts? Did you say telegrams and drafts?

Mr. Frederick: Telegrams and money orders.

The Court: Postal or express?

Mr. Frederick: Western Union. Some of which bear the address of 3152 Lawrence avenue, a business address of the defendant Harry Braverman. Some of which bear the address 4834 North Kimball, the residence address of the defendant Harry Braverman.

[fol. 254] The Court: Payable to whom?

Mr. Frederick: Payable to Eva Braverman. And that the Eva Braverman named therein is the wife of the defendant Harry Braverman. However, the stipulation does not waive the objection to their competency as a matter of proof—I will waive this to eliminate the necessity of bringing Mrs. Braverman as a witness.

On Exhibit 195-A, which is a Western Union money order, there appears written on the back: "Illinois State auto license No. 1936 75-600," which we stipulate is a license number issued to Eva Braverman, the wife of the defendant Harry Braverman. However, as I say, I am not waiving the admissibility, the competency.

The Court: This is for the purpose of identifying the exhibits?

Mr. Frederick: Yes.

Mr. Hopping: The Government accepts and stipulates likewise. Now, as to the necessity of these papers which have been marked Exhibits 195 to 207, with an "A" in each case, they are produced here by an officer of the Western Union and will be available at any time; however, the Western Union representative wishes to keep them in his possession for the time being.

The Court: Well, if he keeps them in his possession he will have to stay here.

Mr. Frederick: You are not offering that, Mr. Hopping, at the present time.

The Court: Which does he do, stay and hold them?

Mr. Hopping: He is staying here and he has them at the present time. The reason he makes that request is to

comply with the order of the Federal Communications Commission.

The Court: What?

Mr. Hopping: That he keeps possession of them as an officer of the Western Union Company; unless an order of this Court is made to the contrary I believe that order of the Federal Communications Commission is binding on him.

The Court: I do not know anything about the order of of the Federal Communications Commission. He is in [fol. 255] court here with these papers and we have them here. They cannot stop us from bringing them here. It is a matter of evidence here in court, irrespective of the order of the Federal Communications Commission to the Western Union Telegram Company. He will be here with them. All right.

CARBAUGH, JOHN SR., having been previously sworn, resumes the stand and testifies as follows:

Redirect examination.

By Mr. Hopping:

I reside at 1646 East 66th street, in Cleveland. During the time I was making these trips I was driving a Ford truck. While I was making these trips I did on occasion go to my home. As to the time of day that I would pick up these boxes, it was mostly in the morning. I did see Johnson and Bagdonas drive a car which bore a foreign license plate, that is, it was not an Ohio license plate. I don't remember whether I noticed what license plate it was, but I do know it was not an Ohio license.

WARE, BENJAMIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hopping:

My name is Ben Ware. I live at 6611 Belvidere, Cleveland, Ohio. I am a truck driver. At one time I did work for Mr. Carbaugh, who just preceded me on the witness

stand, and assisted him in hauling some of the merchandise from the Roadway Transit dock in Cleveland. I aided him in hauling large wooden boxes. I was not present when Mr. Carbaugh was hired to haul these boxes. I did sometimes see some one give instructions as to where the [fol. 256] boxes were to be taken. I saw these people at Mr. Carbaugh's house, though I do not know just when it was. I imagine I helped as truck driver on about ten or 15 occasions, all of the boxes were picked up at the Roadway Transit dock in Cleveland. We took them to 81st street off of Euclid and off 152nd and St. Clair in that garage in the alley. The loads ran 6, 8 or 10 boxes. We did split the delivery between the address on 81st street off St. Clair and off 152nd street. I think I made one trip to a garage out on Woodland avenue. We also took them out on Mayfield Heights, Townfield Road and Minor Road. At the first two places, I saw one of the men that hired Mr. Carbaugh.

I recognize Government's Exhibit 161 as Al who is one of the men that hired Mr. Carbaugh. He is not one who was at those places where the boxes were delivered.

I recognize Government's Exhibit 192, but do not know his name. I saw him off 152nd and St. Clair and 81st.

He was present sometimes when Mr. Carbaugh was hired to haul these boxes. At S. O. M. Center Road, I saw a couple of Italian fellows, one of whose name was Tony. I do not know the other fellow's name.

I recognize Government's Exhibit 193 as one of the men I saw out on S.O.M. Center Road.

Exhibit 194 is a picture of Tony. Tony was always present when I delivered the boxes. The other man was there on occasion. Tony helped unload the boxes. They first lived at a farm on S.O.M. Center Road and then moved to Minor Road. At the last place Tony was always there, but the other man was never there. When we arrived with the boxes at the S.O.M. Center address, these men would come out, we would take it in a big barn and unload the boxes right inside the door. Tony helped unload, but the other man was hurt I guess and couldn't handle them. On Minor Road they had a garage for us to unload them. It was just an ordinary farm at each place. I do not recall that I ever heard any conversation between Tony and Mr. Carbaugh with respect to making delivery of the boxes, nor did I ever hear any conversation between Tony and the other man at the S.O.M. Center Road address.

[fol. 257] Cross-examination.

By Mr. May:

I am a defendant in this case, and have plead guilty to the indictment. I plead guilty to hauling the stuff after I found out what it was. That was after we quit hauling it. At the time of hauling, I did not know what the contents of any of those shipments were. I did not know that I plead guilty to an indictment which contained seven counts and in which I and approximately twenty other men had conspired in different ways to violate the United States laws. I am out on personal bond at the present time. I never discussed this case with an attorney. I did not discuss the case with any Government officers prior to my pleading guilty. I did talk with Government officers about the work I did that is, about the part I had in hauling the merchandise. I do not know the name of the Government officer I first talked with. It was in Cleveland. I received a subpoena to come here to this trial. No Government officer told me to plead guilty. The reason I plead guilty was that after I found out what it was I knew I was guilty of hauling it. I did not know what it was when I hauled it. No one told me that I should plead guilty after I found out what it was.

I made approximately ten or fifteen trips. I drove because Mr. Carbaugh cannot see very well. I received about one dollar a trip. I made about ten or fifteen dollars out of this whole case. I do not have a truck; my son has one. The truck I drove this merchandise in was Mr. Carbaugh's truck. I have not the least idea how many times I went to this farm in the country. It was a little more than two or three times I imagine. I saw the Italians out there, but I never discussed with them the contents of the cans. I know the outside of the boxes were marked "In care of Carbaugh and Son." There was not any label on the boxes to show what they contained. There was no label.

[fol. 258] Cross-examination.

By Mr. Frederick:

My son has a truck and I work for him on occasions. I worked for Mr. Carbaugh about three years, but not regularly, only when he had some extra work. I never worked from the Roadway Transit dock on any other oc-

casion. These shipments were the only shipments I ever hauled from the Transit dock. Most of my hauling was in the nature of furniture moving. Mr. Carbaugh's truck was an open one. Mr. Carbaugh and I did not have any conversation upon the first occasion we went to the Roadway Transit dock to pick up this shipment. Though it was the first time we ever had a job of this kind, it did not cause any comment between us. Though there were a number of trips of like nature following this, Mr. Carbaugh and I did not discuss it. I did not at any time know what was on or in the boxes. I was never curious to know what we were hauling upon these occasions. Mr. Carbaugh never told me that it was rug cleaning fluid. We never had any discussion about the shipments that we were hauling. I hardly ever discuss loads that I am hauling for Mr. Carbaugh. I get paid when I get through the work. That was true in the case of hauling these boxes. When I helped Mr. Carbaugh haul furniture, I get a little more money than I would for these boxes. In hauling furniture I get paid by the job. I got my instructions as to where these boxes were to be delivered from Mr. Carbaugh. I never received any instructions from these other gentlemen that I have identified.

The time of making the first delivery on 81st street off of Euclid I did not have any conversation with the man I met there at the garage. Never a word was spoken. I just unloaded the boxes and got back on the truck. Mr. Carbaugh did not speak with him either. That was the only delivery to that address and it was a split load, the other part went up to 151st in the alley. I saw the same man at the 151st street address. He was there when we arrived. Upon arrival, neither Mr. Carbaugh nor I had any conversation, nor passed a word with him. We merely unloaded the boxes and drove the truck away.

[fol. 259] I never had any conversation with any of the parties to whom the boxes were delivered upon any of the other deliveries. Occasionally I do speak to people to who- I deliver loads, but merely "How do you do." At this occasion I did say to this man, "How do you do." When I said I never said a word to him, I meant I never said a word about the load. I did speak, that is, to say, hello. I don't remember whether I even spoke or not at the time of the first load, or of the second. In fact, I do not remember whether I even said hello upon any of the

loads. I do not know whether Mr. Carbaugh and I had any conversation upon the delivery of these loads. Mr. Carbaugh never even said, "I have got another load of boxes to deliver." Nor did he ever tell me anything about who gave him the order. There was never a word spoken between we two about these shipments. That is not unusual when you work with people.

When Mr. Carbaugh asked me to move a load of furniture, sometimes he says where we are going and tells me how many rooms are to be moved when we get there, but we never carry on any conversation about furniture, nor the loads unless I ask him. The only time I ask him is if there is a piano or Frigidaire. Outside of that I don't make any comment about the load or where we delivered it.

Cross-examination.

By Mr. May:

I have never been arrested or convicted of any crime. Once in a while I would get a quarter for a cigar as a tip on one of these loads. The Italians sometimes gave it to me, but not always.

Cross-examination.

By Mr. Fischer:

I plead guilty on February 5, 1940, the same day Mr. Carbaugh did in this court room. I did not have an attorney [fol. 260] present at that time. I have never had any business with an attorney, nor have I ever been in a court room before. I do not know what you mean by a copy of the indictment. I never received any paper similar to that. The only papers I ever received from a Government officer or clerk before coming to court that day was a subpoena. I knew what I was pleading guilty to after I found out what kind of stuff I was hauling. I never read, nor did anyone read to me, anything pertaining to the charges against me. They never told me what the charges were, or how many charges against me.

Q. In the event that you were charged with murder you would have known that, wouldn't you?

Mr. Hopping: I object to that, your Honor.

The Court: Objection sustained. Just a moment. I have allowed you to go into this in some measure.

Mr. Fischer: I will withdraw it.

The Court: What materiality does that have here?

Mr. Fischer: Merely to show that the man who pleaded guilty—

The Court: That is a matter for the Court to determine, as to what is to be done. I do not see what materiality it has here.

Mr. Fischer: I think it has, Judge.

The Court: What is that?

Mr. Fischer: I think it has but I will cease that line of questioning at the Court's request.

The Court: Well, you aren't doing so at my request. I am asking you a question and you still haven't told me what materiality is it here.

Mr. Fischer: It is material to show any motive on the part of the government in having or in permitting the man to plead guilty when a charge has not been explained to him and I think that the question of motive is very material, your Honor.

The Court: Nothing to do with this case at all. There is no evidence that the government did that.

Mr. Fischer: He is their witness, Judge.

The Court: Go ahead.

I never spoke to anyone regarding my testimony this morning.

[fol. 261] I did appear before the grand jury. I never spoke to anyone before there appearing. My testimony this morning is similar to that as given before the grand jury. As to the names of the men whose pictures I have identified. I remembered the name of Tony when he used to go out there. I never could remember, or never heard the other one's name.

I do not recall who told me what his name was. I did not unload any boxes the contents of which were leaking. I wasn't there at that time. On the boxes there appeared other than "In care of Carbaugh and Son," that Life Company. I can't remember it all. Yes, it was Rug Life. The only thing we knew was that the boxes contained rug cleaning fluid. There was nothing unusual about the package. I do not know why they shipped from the city address to the farm. There was not any conversation or discussion about hijacking that I know of. I never discussed it with Mr. Carbaugh.

The government men told me that there was alcohol in those cans. One day Mr. Carbaugh asked me to come over to his place. I do not know the day, though it was in the latter part of 1939. I do not know the man's name, but he was a United States Government Agent. I talked with him several times after that at Mr. Carbaugh's house. I never talked with him at the police station. I was never arrested. I made my bond here on February 5th. I had never been taken into custody before that day. I have not spoken to these same officers since February 5th, or any other officers of the United States Government, including Mr. Hopping. I did speak with Mr. Hinton, but just to say "hello" since this case has been going on. I have not yet been sentenced.

[fol. 262] MILLER, HERBERT J., called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ray:

I live at 13005 Ardmore, East Cleveland, Ohio. I am in the tool and die business, and formerly was in the garage business. My garage was located at 130 Woodland in Cleveland. I operated it about two years. I began in the early part of 1937. I conducted a general garage business. I rented the property from Mr. Tabor. It was a small garage that cared for about ten or twelve cars. I sometimes employed one or two people. Mr. Tabor, the man from whom I rented, did not have any business at that location, but his son had a gasoline station which was on the corner of the lot where my garage was. The sons' names were Bill and Fred Tabor.

I know Jimmie Badalamenti, and have known him four or five years. I repaired his car and also he came over in regard to renting space from me to store some stuff. It was in November or December, 1937, that Mr. Tabor first came in and asked if I would rent a space to Jimmie. He said he wanted to store some alcohol. He sent Jimmie Badalamenti over a couple of days later. He said he would pay me fifteen dollars a month, and I told him I

thought I could spare a space as large as a car for him. It was Fred Tabor, one of the boys, that talked to me about renting this space to Badalamenti. After this conversation regarding the storage, Jimmie came over and said there was a load of alcohol coming in from Chicago in a Ford.

Mr. May: At this time I would like to interpose an objection to any conversation had between this man and Badalamenti which goes to the indictment wherein the other defendants, other than Klein, are charged.

The Court: That would be true ordinarily, but you have conspiracy charged here. If the jury finds there is con- [fol. 263] spiracy, any act or statement made by anyone whom they find to be members binds all of them.

Mr. May: These two indictments are consolidated for the purpose of convenience, and I would like the jury instructed that goes to that indictment and not to our indictment.

The Court: Objection overruled.

Mr. May: Exception.

The Court: There is a question there. He said there, there was a load of alcohol coming in tonight.

I was present when it came in. The car was driven by one of Jimmie's men. I do not know him. It was a Ford Tudor—I do not remember the license number. I do not know how many cans were brought that particular evening. It was delivered about eight or nine o'clock in the evening. There was no one else in the garage besides myself and the delivery man. We were still working in the garage.

At first the alcohol was stored in the southwest corner of the garage and covered with canvas. Afterwards Jimmie wanted a place built over in the corner. He gave me the money and I had someone build the partitions for him. Following that, loads were delivered every week, or two weeks. All the deliveries were made in a Ford Tudor, until around April, 1938. The deliveries were in cans. After that they came in boxes. The Ford car which brought them had Illinois license plates. There was not always the same driver. Sometimes a girl would drive in with it. Other times a man and a girl, and then again just a man alone. I did not know the girl's name.

After April, 1938, the deliveries were made with a Ford truck. There would be six to eight boxes. It was an open Ford delivery truck. Mr. Carbaugh was driving it. That is the man who was here in the court room this morning. He made deliveries about four or five times. There was two other fellows came in and met him while he came in. There was a driver that came with Mr. Carbaugh, but I never saw him because he never got out of the truck. He did not always deliver the same time of the day.

[fol. 264] The only party I know who helped Mr. Carbaugh unload the boxes was one by the name of Al. I identify Government's Exhibit 161 as the man who came over and helped him unload. I do not know if any one else assisted him. After Mr. Carbaugh made his deliveries, there were two or three deliveries made in a big van which had Illinois license plates. I do not know who was driving that truck. This truck delivered cans. The first time the truck came in, there were one hundred cans unloaded. I did not assist in its unloading. Jimmie Badalamenti sent some men over to unload it. Sometimes he sent his son.

On the second trip, I believe this van delivered about two hundred cans. They were square five gallon cans. There were no stamps or labels attached to them. The cans that were stored in the garage would be taken out of there and shipped in different automobiles.

Q. Let's go to the time that these cans were first being stored in your garage. Who started to take these cans out of your garage?

A. Jimmie had a driver and he would send cars over and they would pick it up.

Mr. Frederick: I object to the witness testifying that Jimmie sent him, unless he heard the conversation or he knows as to Jimmie's driver.

The Court: It may stand.

Mr. Frederick: Exception.

The Court: Go ahead.

They would take out five, ten, or twenty cans.

I do not know who started to take these cans out, though Jimmie and his son took some. There was also a party by the name of Ed Kleppel who worked for Jimmie a while. He started taking cans of alcohol, from the garage,

the latter part of 1937 and the early part of 1938. I saw him take cans out a number of times, that is, a dozen times or more. After Ed Kleppel had made deliveries, Jimmie came and introduced me to a man who he said was going to be his partner and was going to work for him since Ed quit. This was about April of 1938, and he continued to June or July. No one made deliveries after that. [fol. 265] Badalamenti had just these three men so far as I know.

When the first load was brought in, there was no one else in the garage except myself. At the time of the second load there would be a man that I had working for me there. I sometimes helped unload the trucks. Badalamenti did also. Sometimes Badalamenti came over to see if there were any leakers on the load. He would then help unload. I never saw him when Mr. Carbaugh was making deliveries, nor when the moving van was making deliveries. Mr. Badalamenti came to the garage frequently.

During this time, Mr. Tabor and his sons, Fred and Bill, came to the garage. They would come in a couple of times a day. Fred and Bill were there when some of the deliveries were being made. They were there a couple of times deliveries were being made. They did not assist in unloading the trucks or automobiles. I sampled the contents of these cans many times. I drank some of the alcohol. I gave others in the garage a drink, including the Tabors. I gave Fred Tabor a bottle. The only time any of this alcohol got out of my garage without Badalamenti's permission was one time in 1938 when it was hijacked. Ed Kleppel and I were in the garage at the time. There were two fellows hanging around there. I was working underneath a car. Somebody kicked my foot, told me to get out, pointed a gun at me, and told me to get over in the corner, and told us to load up the car with alcohol. I told him I wouldn't do it, that if he wanted the stuff to take it. They took seventeen cans, all that was there at the time.

I had seen this man about the garage before. Jimmie had brought him over to have his friend's automobile repaired. I identify Government's Exhibit 208 as one of those men. I would be able to recognize the other man if I met him. I recognize Government's Exhibit 209 as a photograph of Jimmie Badalamenti. I recognize Gov-

ernment's Exhibit 192 as a photograph of one of the men that drove up from Chicago with the boxes with Al, whose photograph appears on Government's Exhibit 161.

After the boxes had been emptied, Mr. Carbaugh would haul them away. Government's Exhibit 73 is the size of [fol. 266] the box they would come in, that is, six five gallon cans in each box. There were no tax stamps on those cans. Jimmie Badalamenti made five or six deliveries from my garage. He sometimes came in by himself. He had a key to the garage. His son made deliveries a number of times, but I could not say how many.

I am a defendant in this case and have plead guilty to the charge in the indictment.

Cross-examination.

By Mr. Fischer:

I have plead guilty on February 5, 1940. Before I plead guilty, I talked with Mr. Hinton and Mr. Norris. I talked with them five or six times, I imagine, here in Detroit and in Cleveland. I do not know if I was arrested or not. Mr. Hinton called me in to answer some questions. I went up to his office in Cleveland. I made bond in this case when I was here on February 5th. I had talked to Mr. Hinton four or five times before that date. I did not discuss pleading guilty to this indictment with him. I am on personal bond.

I have not talked with Mr. Hopping about this case since posting bond. I did not receive a copy of the indictment. I do not know just what it was I plead guilty to. I know it was handling alcohol. I knew it was alcohol the first time the merchandise was stored in my place. The van that I have mentioned as having delivered merchandise was a Carling Ale truck. It was labelled on the outside of the truck. The other that delivered merchandise was a Ford open truck. It was a stake truck. It belonged to Carbaugh. The Ford had Ohio license plates on. The moving van had either Illinois or Indiana, I guess Illinois.

Prior to this time, I had never had any dealings with the driver of either the ale truck or the Ford truck. I had known Jimmie four or five years. He lived in the neighborhood. I never discussed the alcohol business with him before renting this space to him. I had heard he was in the alcohol business. I never knew or had any business

dealings with a man by the name of Fred Stevens or James [fol. 267] J. Barrett. I do not know the make, nor how large the ale truck was. The only time I ever saw anything on it other than my merchandise, was when it contained empty cases. I never saw it haul any ale or beer. That is the truck that I have described as a van.

At the time the first shipments came in, I rented storage space to one other person whose name was Miss Johnson. She came into the garage morning and night. She paid five dollars a month for storage. Off and on I rented storage space for fifty cents a night. I only did this about twenty times in the two years I was there. I had a state vendor's license. The garage was around forty feet square.

I did not do any bottling in the garage. The bottle I gave Fred Tabor I just picked up. I did drink some of the liquor there, though I never received permission to do so from anyone. The room that I had built was about the size of a car space. I paid ten dollars for the erection of it. The purpose of it was to conceal the merchandise we were keeping. There was no lock on the door of this room. I think the mechanic who was working for me had been in the room. I do not know that he took any liquor though I did give him some, that is, a drink of it. I never sold any of the alcohol to anyone else.

Cross examination.

By Mr. Frederick:

I figure it was in the Fall of 1937 that Jimmie Badalamenti first came to me relative to the handling of the alcohol. It was about November. Before that, I had known him and the only business I had done with him was repair work on his car. The first shipment came in about a week after this conversation with him. The others followed about once a week, until I believe about July, 1938. At the time Jimmie Badalamenti told me he wanted to rent a space for alcohol, I knew it was an illegal business and I made no protest. Though I knew the risk I was taking, I only charged him fifteen dollars a month. Sometimes I did not get paid that. When the shipments increased, I did tell them I thought I should get more, but Jimmie said business was rotten and he would see I got more later on. I never got any more, nor did I receive profits from

the sale of the alcohol. I never sold it, nor did I procure customers for them.

Before building the room, I did help them cover the cans with canvas. I did see that it was kept covered.

I have never been arrested and convicted of any other crime. This is the only illegal alcohol business I have been in. I was in the garage business twenty-five years. I used to own a place across the street from this place. The trucks that delivered alcohol to my establishment did not pay any storage. I never did any garage work on them. I never gained any business from them.

I think it was just before Jimmie quit coming in, and when the big loads were coming in, that I talked to him about getting more money. That would be around June or July of 1938. They did not cause me any more work. Though it was nearly a year before I asked for more money, I did then because repairing was not so good. I could not keep up the rent; I needed money.

I have known Kleppel about two years. He worked for me in the garage in 1938 as a mechanic. The night of the hijacking incident, he was led over to the room and helped load the coupe. I have not seen these men face to face since that day, though one day on Woodland avenue Ed Kleppel and I saw them. That was four or five months later. I did not do anything about it. I do not know their names. When Ed and I passed them, I recognized them as the ones that came up, that is, who had been up there to have his partner's machine repaired. When Ed and I drove by and saw them I did not call the police, or do any thing about it. I didn't like monkeying with them or starting anything.

I do not know the last name of the man I have testified as being Al. It is no one that I have seen here in the court room. The ones that I have said I recognized as having come into my place of business have not been in the court room. I never went to Chicago in connection with this alcohol business, nor did I ever make any arrangements by mail, telephone or wire with anyone in [fol. 269] Chicago relative to it. I never did any business with Mr. Carbaugh before. I never had any conversation with him about these boxes. When he brought the boxes to my garage, there was nothing said between us. A fellow

by the name of Al and Mr. Carbaugh would unload his truck. Al would come in and direct Carbaugh to back up.

Cross examination.

By Mr. May:

I did not see Badalamenti for a couple of days after these persons came in my garage and took the alcohol. I did not discuss the loss with Badalamenti, nor tell him that the place had been robbed. He never asked me what happened to the alcohol.

Redirect examination.

By Mr. Ray:

Exhibit 161 is a picture of the Al that I referred to when I spoke of the man who came to the garage and assisted in unloading some of the alcohol. Though Government's Exhibits 170, 171, 172, and 173, which are shipping orders for the Norwalk Truck Line, have my name on them I had nothing to do with their preparation, nor do I know who prepared them. Al was at the garage when the empty boxes were taken from my garage as was Mr. Carbaugh. I did not see the preparation of these orders.

Re-cross examination.

By Mr. May:

I never gave anyone authority to use my name on Exhibits 171 to 173, inclusive.

[foi. 270] KLEPPEL, EDWARD, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Ray:

I live at 12209 Woodland avenue, Cleveland, Ohio, and have there resided for twenty-three years. I worked for Herbert Miller, the preceding witness, from October 1937 until about Easter 1938 as a mechanic in his garage. My

hours were from 8:00 A. M. until 5:00 or 6:00 P. M. There was another mechanic by the name of William Dudas working with me at the time. I once worked for Jimmie Badalamenti. I saw him once in a while around the Miller garage when he would come and have his car repaired. I also saw him talk with the fellows in the gas station out in front and with Mr. Miller in the garage.

I first saw Mr. Badalamenti, Sr. in the garage around December 1937. I do not recall anything particular that occurred on that occasion. I believe he brought his car in for repairs. After that I saw him in the garage two or three times a week. He would go in and check on the number of cans he had in the garage. These cans were in the southwest corner of the garage. They were brought into the garage from Chicago by a fellow by the name of Doc, whose last name I do not know.

I believe the first time he brought those cans into the garage was in January, 1938. Usually it was around five or six o'clock in the evening. He brought loads of five gallon cans once a week and sometimes every other week. He unloaded them himself. No one instructed him where to place them, so far as I know. He delivered this alcohol all the while I was there. I know what was inside of these cans, which had no Internal Revenue stamps on them, though I did not open any of them. I was present when Jimmie Badalamenti, Sr. opened them. This happened on a few occasions when he would take some of it out of the can and put it in a jug and refill the cans with water. I never helped him do this. His son did.

[fol. 271] Doc delivered this alcohol until about March 24, 1938. Once in a while there was a girl who accompanied Doc. I do not know who she was. She was with him about every other week. Doc was driving a 1938 Ford Tudor Sedan with Illinois license plates.

I started to work for Jimmie Badalamenti in the latter part of January, 1938. I drove not only his car, but his customers' cars. That is, I would take his car, or the customer's car, go to the garage and pick up as many of the cans as were wanted and take the car to where he told me. I would there leave it and walk away. The customers' cars would come to Jimmie Badalamenti's house. He would send his son after me. Jimmie would then tell me to take the car, go to the garage, get a certain amount of cans, and drive it to such and such an address. I would

first go to Miller's garage, get the number of cans required, and deliver the car. Mr. Badalamenti would take the customer in his car and meet me at the address he had given me. The customer would get out of Jimmie's car, enter his own, and drive away. I did this for Mr. Badalamenti two or three times a week. He told me he would give me fifteen dollars the first week, twenty dollars for the second week, twenty-five dollars for the third week, and so on until it reached forty dollars a week, where it would stay. I did not receive this compensation. I got fifteen dollars for the first two weeks. After that, he gave me ten dollars and said he would owe me five dollars.

During the time I was doing this for Badalamenti, I also kept my job with Miller. I stopped working for Badalamenti the same day the hijacking occurred, that is, just before Easter 1938. I was in the garage at the time of this occurrence. It was about four or five o'clock in the afternoon, when two fellows drove up in a Plymouth Coupe. They talked to Miller about repairing a car. Herb and I went into the garage and were working on a car there. These two fellows walked in. One put a gun on me, walked over and kicked Mr. Miller's foot, he then being underneath a car, and told him to get out. One fellow backed a car in and insisted that we load it up with this stuff. I put seventeen cans in this car. I do not know what license [fol. 272] plates were on the car. I had never seen these men previous to this occasion. I have seen them a few times since, that is, I have seen one of them.

I cannot identify the picture which is Government's Exhibit 208. I have never seen that man before.

As the Plymouth car was pulling out of the garage, Mr. Miller threw a jack at the car and hit the driver in the back of the head, smashed the rear window. I left, went over to Jimmie Badalamenti's house and told him I quit. I worked for Mr. Miller about two weeks after that and then went on W.P.A. I did not see who made deliveries for Mr. Badalamenti after that.

I saw Bill and Fred Tabor around the garage every day. They had a gasoline business on the corner. I do not recall that they were present at any time when deliveries were being made into the garage. They were present a few times when I took the cans of alcohol and put them in the customers' cars, though they had never assisted me. I saw them at the garage talking with Jimmie

Badalamenti. I do not recall that they ever went into this private room that Mr. Miller built. I do not think that they were ever present when Badalamenti was diluting these five-gallon cans. I was present when they inquired how Jimmie's business was.

I did not see who was making deliveries to Miller's garage after Doc and the girl stopped, because I quit at that time. I saw a few boxes in the garage like the one here, which is Exhibit 73. I saw three of these empty boxes, though I never saw any full ones. I never saw any of these boxes delivered. I did see some of these boxes after they were opened, though they were empty at the time I saw them. I never made any deliveries for Jimmie Badalamenti to the customer's home. I have seen Jimmie Badalamenti take some of these five-gallon cans out of the garage. I never saw anyone, except Badalamenti, Sr., and myself, do this however. I never opened any of these cans, nor drink any of its contents. The cans I took from Miller's garage were full. There were no tax stamps on them.

[fol. 273] Cross-examination

By Mr. Frederick:

I am a single man. Before working for Mr. Miller, I worked at the White Motor Company factory in Cleveland for about nine months. Prior to that, I was a chauffeur. I started to work for Mr. Miller as a mechanic in 1937. Mr. Dudas was employed in a like capacity. There were just the two of us and Mr. Miller who worked in the garage.

When I first saw these shipments, which I learned to be alcohol, being brought into the garage, I did not have anything to do with them. I do not know just when it was with reference to the first shipment that I was told they were alcohol. I know it was after its arrival and after it had been unloaded. I did not help in unloading the first shipment.

Though I knew Jimmie Badalamenti before going to work in Miller's garage, I did not know that he was in the illegal business of selling alcohol. I first learned this when he brought his car to have it fixed. That was in December 1937. It was before this first shipment. I did not know Mr. Badalamenti to be in any business before that. I had previously known him as a neighbor. Mr. Badalamenti

first talked to Mr. Miller, who in turn asked me if I wanted to work for him. That was after several loads had been brought into the garage. It was before the room had been built. The work I did for Mr. Badalamenti was during the same time I was supposed to be working for Mr. Miller. I never aided in unloading the cans or in storing them. I did, however, load them into the cars as I have described.

Mr. Dudas never had anything to do with the handling of these cans, so far as I know. He never made deliveries of them. I do not know if he had a similar working arrangement with Mr. Badalamenti or not. Mr. Dudas, Mr. Miller and I never discussed this illegal business that was going on in the garage. I did object to Mr. Miller about the illegal alcohol being stored in the garage a few times. I do not remember when I first did. I told him [fol. 274] he ought not to do it. As I recall, he made no reply. I believe this was before I went to work for Mr. Badalamenti. While I wasn't agreeable to doing this work. I was agreeable to forty dollars a week. My salary never reached this figure however. I worked for Mr. Badalamenti about six weeks. I did tell Mr. Badalamenti, when he only paid me ten dollars and held back five dollars, that I was not going to engage in running alcohol for that little money. However, I never told him that if he did not pay me I would see that I got my money some other way.

After quitting Badalamenti, I did work for Mr. Miller about two weeks. During that time I had no quarrel with Mr. Badalamenti. I had no quarrel with Mr. Miller because I quit work.

I didn't know these men who came in and hijacked the place and had never seen them before. I saw one of them afterwards on Woodland avenue. Mr. Miller was with me at that time. I did not do anything or report it to anyone when I saw this man on Woodland avenue. I did not report it to Mr. Badalamenti. At the time of the hijacking, I did report it to Mr. Badalamenti. I never told Mr. Badalamenti that I saw the man afterwards. The only one I told about seeing him was Mr. Hinton after I was arrested in the case.

A man by the name of Doc brought the alcohol in a car. I do not know anyone by the name of Al. I do not know whether this Doc is the same man as the Al I heard Mr. Miller testify about. I have identified a picture of the

man I call Doc. I do not know the man that we have spoken about as Al. I do not know the girl that was in the car upon occasions, nor have I ever identified any pictures of her.

Though Fred and Bill Tabor were in the garage every day, I do not know of anything they had to do with this alcohol. I never saw them haul any of it or take part in unloading any of it. I never saw them talk to the drivers of the cars that brought the cans. Bill and Fred Tabor had nothing to do around the garage. Their father owned the property and they had a gasoline station on the same lot. [fol. 275] On occasions I worked at the garage until eight or nine o'clock at night. The deliveries of the cans of alcohol were made during the day as well as in the evening. I never saw the Tabors have anything to do with it, though I saw Fred Tabor take a bottle of it home. I never talked with them about the business, nor did I ever talk with Dudas about it. I do not know when I was arrested in this case, though it was after I quit Fred Miller and while I was on the W.P.A.

At the present time, I am a mechanic and employed at the White Motor Company. I only started to work there last Monday. I was called back to White Motor in November 1939 and worked there until January 12, 1940. I was laid off until this past Monday.

I was arrested in this case at the same time Mr. Miller was. I was taken down to the office of the investigators. Mr. Hinton and Mr. Norris were there. I made a statement at that time. I plead guilty to the indictment February 5, 1940. I have not been sentenced. The time I entered my plea of guilty, I did not read the indictment nor did I have an attorney representing me. I know I plead guilty to conspiracy, that is, to help them in the illegal business of transporting alcohol. I just plead guilty to one conspiracy that I know of. I do not know if I entered a general plea of guilty to this indictment.

Q. The indictment charges seven conspiracies.

The Court: Well, let's settle that. That is an extravagant statement. You claim there are seven conspiracies?

Mr. Frederick: Set up in seven separate counts. Each count sets up a conspiracy, yes, your Honor, seven counts. Each count sets up a conspiracy.

The Court: Is that right?

Mr. Hopping: I would not say that that was, your Honor. It is one count—

The Court: Well, never mind.

Mr. Hopping: One conspiracy indictment and seven counts charging seven illegal objects of the conspiracy.

Mr. Frederick: That is a question of law and argument.

The Court: Oh, I don't think so. Go ahead. What difference does it make if he plead guilty to seventy? How [fol. 276] does that affect his case here? According to this man's own statement, he is guilty of something. Are you concerned with what he pleads guilty to?

Mr. Frederick: I am concerned with what he has been apprised of.

The Court: What difference does that make to you?

Mr. Frederick: It makes a difference from the standpoint of finding out or trying to ascertain whether there has been any inducement or promise.

The Court: You have not asked about that. And also, as far as they have asked him to plead guilty, find out what was said.

Mr. Frederick: Very well.

The Court: You are going clear around the bush of whether you are claiming that somebody has misled him.

No one asked me to plead guilty before I did, nor did they tell me that if I plead guilty I would be rewarded in any way. They did not tell me that I would have a light sentence or no sentence. No one told me that if I did not plead guilty something would happen to me, or that I would go to jail for a long period of time. I am on personal bond in this case.

Cross-examination.

By Mr. Cavanagh:

When I went to work for Mr. Badalamenti, Mr. Miller made the arrangements. After Mr. Miller asked me if I wanted to work for Mr. Badalamenti, Sr., I made all arrangements with him. I was working for Mr. Miller during the same hours of the day that I was employed by Mr. Badalamenti. There were no arrangements between Mr. Miller and Mr. Badalamenti about interrupting my work in the garage, though it was interrupted. Mr. Miller never paid me in behalf of Mr. Badalamenti. My salary

from Mr. Miller was fifteen dollars a week. I had no understanding with Mr. Miller relative to any increase in salary at the time I went to work for Mr. Badalamenti.

I had been working for Mr. Miller about two months up to that time. There was no apparatus in this garage [fol. 277] for bottling. The alcohol which was taken out the cans was placed in one fifteen-gallon bottle. It was just dumped out of the can by Mr. Badalamenti. He would then refill the can with water. The alcohol that was put in the fifteen-gallon bottle was then poured into some extra cans. There was no particular equipment used to perform this operation. I never tasted any of this, nor was any of it ever given to me. There were never any sales made in the garage while I was present. I believe this sold for twenty-three dollars a five-gallon can, I do not know any of the purchasers. I never saw anybody purchase this alcohol during the time I was working for Mr. Badalamenti. I do not know where this alcohol came from. All I know was what Jimmie told me. He said it came from Chicago.

DUPAS, WILLIAM, called as a witness on behalf of the Government, being first duly sworn testified as follows:

Direct examination.

By Mr. Ray:

I live at 9606 Cumberland avenue, Cleveland, Ohio. I have lived in Cleveland all my life. I was employed by Mr. Herbert Miller from I believe December 1937 to the latter part of 1938. I was an apprentice auto mechanic. My pay was dependent upon how much business he got during the week.

I became acquainted with Jimmie Badalamenti, Sr. about two weeks after I began employment. He was a customer. I saw him at the garage quite often after that in connection with the alcohol that was stored there. That was in January 1938. So far as I knew, Badalamenti, Sr. was the boss of this alcohol business. He just came to the garage and talked to Mr. Miller about the alcohol. I do not know who was making the deliveries of alcohol to the garage. I would say they were made about two or three times a week. They were made in a Ford Coach. They would average about ten cans to the load.

[fol. 278] At first, the cans were stored in the southwest corner of the garage, covered by a tarpaulin. They were covered by the fellow who brought them. It was about a month that the deliveries were made in the Ford car. After that they were delivered in a small Ford stake truck. I do not know who drove the truck. I never saw the driver of that truck in the court room. As I recall, this truck made about three trips. The truck did not deliver the alcohol in open cans. I believe it was in either cardboard or wooden boxes. There were about three or four boxes on the truck at the time of the deliveries. I never assisted in unloading them. I believe there was a partition in the garage at the time the truck made the deliveries.

Government's Exhibit 73 is the type of box that the cans were delivered in. They were unloaded from the Ford truck by the man who brought them, and I never saw the boxes opened up. I did not get a good look at that driver, because I was usually working on a car when they came in.

I did say that this truck made three or four trips, but I couldn't say over what period of time the deliveries were made. It may have been about two or three months. After this Ford truck stopped making deliveries, the alcohol was brought in a large Carling's Ale truck. I do not recall who was driving it. The truck had Illinois license plates. I did not take the number. I saw the ale truck opened and unloaded. I am not sure whether I ever assisted in unloading it, though I might have. I think Mr. Miller asked me to assist. I do not recall whether Mr. Miller assisted the driver and me unload it. The alcohol in the Carling's Ale truck was in cardboard containers of five gallon size. There was an individual cardboard container for each can. I never opened any of the containers, but I saw some that had been opened. I saw the can inside. It had no tax stamps. I imagine there would be between one hundred and two hundred of these containers on this Carling's Ale truck.

It made quite a pile in the garage. If I remember correctly, this truck made two deliveries to the garage while I was there. Badalamenti, Jr. came to the garage twice [fol. 279] while I was there. That would be in about one month. He loaded cans in a 1935 Ford coupe and would take them out and make a delivery. I do not recall the month. I never assisted him in loading the Ford coupe. Badalamenti, Sr. was around the garage sometimes every day in the week and sometimes a few days a week. I

saw the Tabor boys around the garage and saw them converse with Badalamenti, Sr., though I was never close enough to overhear the conversation. They never were around this alcohol together, though I have seen the Tabor boys go over to the alcohol. Fred often went back and looked at them and asked me how they were going out. On one occasion he said it smells terrible. I drank some of the alcohol on two occasions when Mr. Miller brought it out and tried to have some highballs. I never took any of it home.

I do not believe the Ford car always had Illinois license plates on it. I changed the plates. Mr. Miller got the order from the driver and told me to change them. I changed them to Ohio license plates which the driver had with him. I made no memorandum of the number of the Ohio license plates. This occurred but once. That was about three weeks after I started working for Mr. Miller. This was done right after he drove into the garage. On that occasion he took some of the cans of alcohol from the garage with him. I do not know the man's name.

Miller's garage is on 130th and Woodland. The gasoline station is in front and the garage is next to it. Ed Kleppel was employed as mechanic in the garage. I saw him make deliveries two or three times. I didn't see him make a delivery, I saw him come into the garage with the stuff. He had a Terraplane, which I had previously seen Jimmie Badalamenti, Sr. drive. I saw Kleppel drive that car into the garage and load it up. He also drove a Ford V-8 coupe in. I did not see how many cans he put into that car. I never helped Ed. On one occasion I saw Mr. Miller help Ed load cans in the Terraplane, or in the Ford. I never made any deliveries for Mr. Badalamenti.

I am a defendant in this case and have plead guilty to the indictment. I am under personal bond.

[fol. 280] Cross-examination.

By Mr. Frederick:

It was probably two or three weeks after I started working there that I learned these shipments contained alcohol. It was after several shipments had been brought in. I do not recall just how I found out, though I do

know Mr. Miller told me. I didn't ask him and he didn't volunteer the information. It just got around that I found out. I did tell you that I learned from Mr. Miller that it was alcohol. I don't recall how I found out. I do not recollect ever having any conversation with Mr. Miller relative to the illicit alcohol. I never had any conversation with Mr. Kleppel or with Mr. Badalamenti relative to the illegal alcohol.

I was at the garage from the latter part of December 1937 to about December 1938. Though I knew there was an illegal business being carried on there, I didn't think I had any business discussing it with anybody. We had sort of a talk about it once in a while. I mean Mr. Miller and I. I don't remember the first talk I had with Mr. Miller about it. Mr. Miller talked about getting his money from Jimmie Badalamenti for storing the alcohol in his garage. At that time he was talking to Ed Kleppel and me. I just told him if he did get his money well and good. He told me why carry on business if you can't get any business. I also talked with Mr. Miller about the way the stuff smelled around there and the cans he had there. This was on another occasion. I can't definitely remember any other conversations. I was not there at the time of this so-called hijacking. I never had anything to do with the alcohol that was stored in the garage. I never loaded it or unloaded it, nor did I ever load any of the cars that carried it out. I never delivered any of it. The only thing I ever had to do with it was when they asked me, I took it up to the car and put it in the car; that is, I took it from the back of the garage to the car that was to deliver the alcohol. I did this sometimes at the request of the person that wanted to deliver it. They would be strangers to me. That happened about two or three times. I never received any pay for that. I never [fol. 281] saw the person who took the alcohol pay anyone for it. I helped them put it in the car on my initiative and not at the request of Badalamenti or anyone else.

I plead guilty at the same time Mr. Miller and Mr. Kleppel did. I have not yet been sentenced. I don't believe I was arrested. I was questioned before appearing here in court. I do not recall the first time. It was in 1939. I have discussed the case with the officers that arrested me. They never told me it would be to my advantage to plead guilty, nor did they ever tell me it would

be to my disadvantage to plead not guilty. They did not promise me immunity if I plead guilty. I was first notified that I was to be a witness in this case upon the first occasion that I talked to them.

Cross-examination.

By Mr. May:

I am twenty-two years old and single. I started working in the garage in 1937. Since being questioned by the officers of the Alcohol Tax Unit, I have not discussed this case with either Mr. Kleppel or Mr. Miller, I have not discussed how I was going to plead. They never told me what to do. Everything I have done has been on my own initiative. I realize that I have plead guilty to an indictment that charges myself and approximately twenty other men with conspiracy to violate the laws of the United States. No one ever read the indictment to me or told me what I was charged with. They charged me with conspiracy. As I understand it there were so many counts in this conspiracy, I believe I am charged with but one of them. I believe I am charged with one count. If you were to tell me that I am charged with seven counts in this indictment, I guess it would be news to me. When you tell me that I plead guilty to all seven counts in the indictment, it wouldn't be news to me, because I plea guilty here.

I do not know Henry Skampo, alias Clarence Wilson, alias Hank Skampo, alias Chester Johnson; nor do I know Clarence Dracka, alias Don Nelson, alias Bert Foley, or Harry Klein or Morris Frank defendant here on trial. [fol. 282] The name Jack Cantella is familiar. I think I know him. He is one of the men that came into the garage I worked in. A fellow by the name of Jack I knew, and the last name sounds familiar. I do not know if that is his last name or not. I never had any dealings with any of these men.

At the garage, sometimes I did not receive any salary. I would get paid when some customers came in to repair cars. The most I got was five dollars a week. Badalamenti never gave me any money.

Government's Exhibit 161, is, I believe, Tardino. If you should tell me that his name was Johnson, I would say that he still resembles Tardino. Looking at Govern-

ment's Exhibit 208, I would say both pictures look alike. No, I looked at them both, I would say Government's Exhibit 161 is Tardino. I don't think I know whose picture appears on Government's Exhibit 208. I have never been in any trouble in my life.

Cross-examination.

By Mr. Cavanagh:

I did testify on direct examination that I aided in unloading the truck at Mr. Miller's request. This did not occur very frequently, only when they brought an extra big load in. This occurred once in a big Carling's Ale truck. It was like a moving van. It had side-doors on it, also doors that you could lift up. That is, the top door you lift up and the bottom door you drop. It was a four-wheel vehicle. I do not know the make or tonnage. I think it was painted red and black. The names were painted in black on red. It was an enclosed body. I do not know how high or long the body was. The lettering that appeared on the truck was "Carling's Black Label. Carling's Ale." It was in large letters. The Ford car on which I changed the license plates delivered some of the merchandise and took some out. I believe I changed the license plates on only one occasion. I never changed the plates on the truck, nor did I ever see anyone else do so. The truck came to the garage twice. I do not know if it had [fol. 283] the same license numbers, but I do know that it had Illinois license plates. I did not notice whether the lettering on the truck indicated the location of the Carling Company. (Government's Exhibit 106 was at this juncture received in evidence.)

Besides the lettering I have described on the truck, there were its weight numbers and I do not recall anything else. I do not believe the truck brought boxes at any time. They were all cartons.

I did testify as to having a conversation with Mr. Miller relative to some money that was due him, though he did not tell me how much it was.

I believe the first shipments of this merchandise had been brought to the garage before I started working there. I was there at the time the tarpaulin was thrown over the merchandise. This was usually done by the driver that brought the stuff in. Once in a while, I saw Mr. Miller

cover it up. At that time this did create a suspicion in my mind as to what the merchandise was. I first saw boxes brought in there about two or three months after I was working there. That would be about February 1938. There was nothing unusual or suspicious about the appearance of these boxes. I only helped load a few times. I helped unload once or twice. I had highballs there about twice. I don't believe I ever saw Mr. Miller give any of the merchandise to anyone. I never saw anybody else take anything out of the garage except in cans. I was not present when Mr. Tabor took any bottles out of there.

There was just one car that had regular storage in the garage.

[fol. 284]. BOWEN, ERNEST C., a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hopping:

I am superintendent of the Western Union Telegraph Company, Detroit district. This district includes Wyandotte, Michigan. There is a branch of our company at Wyandotte, Michigan. I have been so engaged since December 1, 1937. As superintendent, I have general supervision of the business and records of the Western Union Telegraph Company in this district.

I recognize Government's Exhibit 195 as being a record of the Western Union Telegraph Company made in the ordinary course of business. It was made at the time of the transaction it records, and is an accurate recording thereof. It is made at the office and passes through the necessary accounting process at the local office. This is a money order application. After it passes through the necessary accounting process locally, it is sent to our Division Auditor at Chicago, Illinois. The record shows a money order originated in our office, which is designated as B. J. That is the office designation at Wyandotte, Michigan. This particular paper does not show that it was filed on the wire for transmittal. The original wire message used in the transmission of money is another paper, which is not present here.

Exhibit 195-A is a Western Union money order draft. It is part of the record of the same transaction which is recorded on Exhibit 195. Exhibit 195-A is a draft. No message attached. It is prepared at the paying office by our employees. Payment is made payee upon proper identification. The paying office in the case of Exhibit 195-A is Chicago, Illinois. The two records, Exhibits 195 and 195-A, show a record of complete transaction of a message originating in Wyandotte and terminating in Chicago. Exhibit 195 is a money order draft. Payment was made. [fol. 285] The records are kept together by our company at the Division Auditor's office.

I identify Government's Exhibit 196 and 196-A in a similar manner. They are a record of application for money order and delivery of the same, having the same point of origin and the same destination. Government's Exhibits 197 and 197-A are identified by me in the same manner. They are a record of another transaction by the same two stations and same parties.

The same is true of Government's Exhibits 198 and 198-A; 199 and 199-A; 200 and 200-A; 201 and 201-A; 202 and 202-A; 203 and 203-A; 204 and 204-A; 205 and 205-A; 206 and 206-A; 207 and 207-A. All of these are between the same points of origin and destination, kept in the same manner and made in the same manner.

SKAMPO, HENRY S., called as a witness on behalf of the Government, and having been previously duly sworn, resumed the stand and testified as follows:

Direct examination.

By Mr. Hopping:

I am the same Henry Skampo, who testified a few days ago. I am a defendant in this case and have entered a plea of guilty. I identify Government's Exhibit 207. I first saw it yesterday. I saw it at the time it was made. That was at the Western Union office in Wyandotte, Michigan. It was made out by the young lady in charge of the Western Union office.

Q. And how did she get the information which she wrote down there?

A. I gave it to her.

Mr. Frederick: I object to that.

The Court: Overruled.

Mr. Frederick: Exception.

She wrote it as I dictated it. I saw her write it. I had been there on several other occasions. The date of that is March 11, 1936.

[fol. 286] Q. I will show you Exhibit 193 and ask you if you can identify that exhibit?

A. I do.

Q. Did you dictate that message to the young lady in the Western Union telegraph office?

A. I did.

Mr. Frederick: I object to that, as to whether or not he dictated the message. This witness cannot testify to the particular message he is looking on, inasmuch as it is not in his writing.

The Court: This called the message, is it not?

Mr. Hopping: Yes, it is.

The Court: Is this the message, the original message?

Mr. Hopping: Yes.

The Court: He may answer.

Mr. Frederick: An exception.

I saw the exhibit written out by the young lady in the Western Union office. She wrote it as I dictated it. That was on January 25, I think, 1936.

Q. Do you recall the time that you were in there as you have just stated, on the occasion that you dictated those two messages?

A. You mean the time of the day?

Q. No, do you recall the—

The Court: The occasion.

Q. The occasion and what you were doing at the time?

A. Yes.

Q. Were those telegrams connected with the alcohol business that you were doing at that time?

Mr. Frederick: I object to that question, if the Court please, in that form, being argumentative, calling for a conclusion.

The Court: He may answer.
Mr. Frederick: Exception.

A. Yes, they were.

Q. And with whom were you doing alcohol business in connection with those Exhibits 195 and 207?

A. Mr. Braverman.

Mr. Frederick: I object to that question in that form for the same reasons.

[fol. 287] The Court: Same ruling.

Mr. Frederick: Exception.

Q. Your answer is what?

A. Mr. Braverman.

The Mr. Braverman I refer to is the defendant here on trial. I identify Exhibit 196 as Western Union money order which I sent in the same manner. I did have some discussion with the defendant, Harry Braverman about these exhibits before the merchandise was forwarded from Chicago. That would be in the early part of January of 1936.

Q. What was the conversation that you had with the defendant Harry Braverman at that time?

Mr. May: I object to this conversation as to defendants Klein and Frank, on the ground there is no connection shown between the two and it is immaterial as far as they are concerned and it goes to the indictment on the other, on which the other two were tried, and not defendant Klein.

Mr. Cavanagh: The same objection on behalf of defendants Barrett and Stevens.

(Question read by the shorthand reporter.)

A. Arrangements were made whereby—

The Court: No.

Mr. Frederick: I object to that.

The Court: Tell as near as you can what was said, what he said and what you said.

A. Mr. Braverman said he would forward the merchandise and as fast as we disposed of it and got the money together I would forward the money I had on hand.

Mr. Fischer: May we have the place of the conversation, please?

Q. Where did that conversation take place?

A. If I recall correctly, at 9666 Grand River Boulevard—or, Grand River avenue.

I couldn't say if any of the other defendants were present at the time I had this conversation with Harry Braverman.

The addressee, whose name appears on each of these exhibits, was a name given to me by Mr. Braverman. The [fol. 288] name he gave me was Eva Braverman, 3152 Lawrence avenue, Chicago. That is the address I dictated on the exhibits. I signed the name "Wholesale." Mr. Braverman gave me that name, it was a nickname.

Mr. Hopping: I will offer in evidence Exhibits 195 and 196.

Mr. Frederick: I wish to object to the introduction of these exhibits upon the ground that the party named, as stipulated upon the record yesterday, is the wife of a defendant in this case and that this is permitting by indirection that which cannot be done directly, to-wit: A wife to testify against a husband. For the further reason that the exhibit here introduced bears a signature, under the name, signature, as the sender, "wholesale," which is not the name that the witness has testified as being used on previous examinations, or previous testimony, as being that which he sent to the defendant.

The Court: Well, supposing that Braverman and his wife entered into that sort of arrangement, would that be a waiver on the part of Braverman as to the question of husband and wife?

Mr. Frederick: I submit it would not be a waiver.

The Court: Objections overruled.

Mr. Frederick: Exception.

Mr. May: I would like to object in behalf of the defendant Klein, if the Court please, on the ground that there is no connection shown between this defendant and these telegrams; that this goes to the indictment wherein the other defendants are charged and not the defendant Klein. There is no connection shown between that merchandise which was shipped from Chicago to Detroit, between that merchandise and defendant Klein. And it is not material as far as he is concerned.

The Court: Objection overruled.

Mr. May: Exception, on the record.

Mr. Fischer: If the Court please, on behalf of defendants Stevens and Barrett we also wish to object to the introduction.

The Court: They may be received.

Mr. Frederick: I wish for the purpose of the record to note the further objection that the documents introduced [fol. 289] in evidence are not properly identified in that the writing that appears thereon is not verified or identified by this witness, and it is not the best evidence.

Mr. Hopping. It has been identified.

Mr. Frederick: It has been identified by this man as conversation dictated to an employee of the Western Union and that the telegram was written by that employee.

The Court: It may be received.

Mr. Frederick: Exception.

Government's Exhibit 195 was then read to the jury by Mr. Hopping. The "21 Street" written under the signature "Wholesale" was Mr. Dracka's address. Exhibits 195-a and 196 were then read to the jury by Mr. Hopping. The message on there is just as I dictated the words to the operator.

Q. What is the significance of the word "machines" on there?

Mr. Frederick: I object to that, if the Court please, as calling for the opinion. The record speaks for itself.

The Court: He may answer.

Mr. Frederick: Exception.

The Court: Maybe it is a code; I do not know.

A. "Machine" refers to alcohol.

Q. Was it a code word which you used in that telegram?

A. It was not necessarily a code word. It just had reference to alcohol.

Q. Was it so understood between you and Mr. Braverman?

A. There was no understanding ahead of time. I just used the word "machine" but it had reference to alcohol.

Mr. Frederick: I wish to move at this time to have it stricken out, if the Court please, as calling for the opinion and conclusion of the witnesses.

The Court: Motion denied.

Mr. Frederick: Exception.

I do not recall if I received any answer by Western Union to that telegram.

Exhibit 196-A was then read to the jury by Mr. Hopping. I identify Exhibits 197, 198, 199, 200, 201, 202, 203, [fol. 290] 204, 205, 206, and 207 as being Western Union money orders, which were made in a manner similar to Exhibit 196.

I recall the day and the occurrence of my sending Exhibit 202, which is a telegram written as I dictated it to the young lady.

Mr. Hopping: I will offer in evidence Government's Exhibit 202.

Mr. Frederick: I wish to note an objection to it for the reasons previously stated in objecting to the exhibits 195, 196 and 207.

Mr. May: In behalf of the defendant Klein I wish to note an objection also in addition to the objections I made to the introduction of the previous exhibits, that this is highly prejudicial to his case, inasmuch as he is not charged in that indictment wherein these proofs go.

The Court: Objection overruled.

Mr. May: Exception.

Mr. Frederick: And an exception.

Mr. Fischer: An exception upon the same objection as to defendants Barrett and Stevens.

The Court: It will be received.

Mr. Hopping: Reading Exhibit 202.

I do not know whether I talked with Harry Braverman during the day I sent that message. I talked to him at different times on the telephone. I know I tried to get him. There was a couple of times I tried to get him but couldn't. I recall that I talked to him about the time of sending this money order. I told him that we were out of merchandise and wanted to know if he could forward some. He said he was having trouble in securing the merchandise at that time. He was going to go out of the business. This was February 15th. I was delivering the alcohol after I received it to different people. I was not delivering it to any of the defendants in this case. I was frequenting a bookie at 9666 Grand River avenue at that time. At different times I talked with different people at 9666 Grand River avenue regarding alcohol, but I could not say that I did at the time of this particular shipment.

I talked with Louis Klein, a brother of Harry Klein, con-[fol. 291] siderably at this address. Sometimes Harry Klein was present when I talked to Louis and sometimes he was not.

I would not say that Harry Klein ever participated in a conversation regarding alcohol on those occasions. My conversations with Louis Klein occurred about the time I was sending these telegrams and money orders to Harry Braverman. I did talk with Louis Klein in Harry Klein's presence about the delivery of some of the alcohol which I was receiving from Harry Braverman.

Q. And does that reference on Exhibit 202 where it says you are telephoning, refer to one of the telephone conversations that you had with Harry Braverman regarding the alcohol?

A. It does.

Mr. Frederick: I object to that and ask that the answer be stricken. The "witness" statement of what that refers to—the statement speaks for itself—the testimony speaks for itself.

(Record read by the shorthand reporter.)

The Court: It may stand.

Mr. Frederick: And exception.

I do not recall whether in my phone conversations with Harry Braverman anything was said regarding the messages which I sent by Western Union or not. At the bottom of the message it does say, "Wire by Western Union immediately some information." I do not recall whether I received it or not. I do not recall whether I received any replies to these messages. I did talk with Harry Braverman regarding the same matters I put in these telegrams during the same period of time. I did talk with him on the telephone regarding machines. On the telephone, I may have used the word "merchandise."

Q. But in either case, merchandise or machines referred to alcohol?

A. It did.

Mr. Frederick: I object to that, his interpretation or his opinion, a conclusion.

The Court: It may stand.

Mr. Frederick: Exception.

[fol. 292] The defendant Braverman did use the term "merchandise" in talking with me at those times. I could not say that he ever used the term "machines" in communicating with me.

Mr. Frederick: May I see Exhibit 202? I believe you stated that the date on here was 1937. The other date, my notation shows it would be 1936.

Mr. Hopping: 1936 is undoubtedly correct, your Honor.

The Court: You read "February 15, 1937."

Mr. Hopping: There is a pencil figure written right over the end of the date stamped and I read "7." It is undoubtedly February 15, 1936.

The Court: You can agree on that?

Mr. Frederick: 1936.

The Court: That is Exhibit 202?

Mr. Hopping: That is correct.

Exhibit 202-A was then read to the jury by Mr. Hopping.

Mr. Hopping: Now, your Honor, I offer Exhibits 198, 198-A, 199, and 199-A, 200, 200-A, 201, 201-A, 202, 202-A, 203, 203-A, 204, 204-A, 205, 205-A, 206, 206-A, 207, 207-A.

Mr. Frederick: I wish to note an objection for the reasons previously stated without reiterating.

The Court: Well, they all have reference to similar transactions according to the evidence preceding.

Mr. Hopping: Yes, your Honor.

Mr. Frederick: All formulated, I believe in the same manner?

The Court: No special objection is required as to any particular one.

Mr. Frederick: No, your Honor.

The Court: So it does not require counsel to offer them separately each time when they are objected to. The same class of evidence.

Mr. Frederick: Yes, and the objection is based upon those reasons as to the—

The Court: All right. They may be received. Exceptions granted.

Exhibit 197 was then read to the jury by Mr. Hopping.

[fol. 293] The Court: Let me ask you, you read these and their exhibits for instance, 197, I don't know whether the jury gets all of this; as I understand it, he sends a telegram

—or it is claimed that he sends a telegram to Chicago and wires the money, deposits it here—that telegram indicates the money is deposited here, and then in Chicago the Western Union issues this money order payable to the person indicated in the telegram.

Mr. Frederick: That is correct.

The Court: I see. Well, then, I just didn't get that. All right.

The back of Exhibit 197-A, and the front and back of Exhibit 198-A were then read to the jury by Mr. Hopping.

The Court: Is that 198-A?

Mr. Hopping: The one I just read, and I am now reading 198.

Mr. Frederick: Are they not more properly described as money order applications:

The Court: You just read that money order.

Mr. Frederick: In each case the "A" is the money order; in each case the money order is the money order application?

Mr. Hopping: That is correct, your Honor.

The Court: You said you read 198-A.

Mr. Hopping: I happened to get that first, and I am now reading on the application for the money order, which was 198-A, the application is 198.

Exhibit 198 was then read to the jury by Mr. Hopping.

I stated in the telegram, "Machines not arrived yet." The alcohol had not arrived. I stated that I would wire Western Union on arrival.

Q. Did you subsequently wire that day, if you recall?

A. In case the alcohol was in the City of Detroit, but it had not arrived at Wyandotte; I said, "Understand tomorrow, wiring you by Western Union arrival."

Q. And the alcohol was in Detroit, but it had not been delivered out at Wyandotte as yet, and when you said "Understand tomorrow morning"—

A. That meant that the delivery would be made tomorrow morning.

Mr. Frederick: I object to that, to what it meant, its interpretation of the language.

[fol. 294] The Court: Well, you mean you understand "tomorrow morning" was in the telegram?

Mr. Hopping: Yes, it is, your Honor.

The Court: His telegram?

Mr. Hopping: Yes, sir.

The Court: It may remain.

Mr. Frederick: Exception.

Exhibits 200, 200-A, 199, 199-A, 201, 201-A, 203, 203-A, 204, 204-A, 205, 205-A, 206, 206-A, 207, 207-A were then read to the jury by Mr. Hopping.

Louis Klein, the brother of the defendant Harry Klein of whom I spoke, has passed away.

One of the numbers that I placed on these telegrams, 21st street, was the address of Mr. Dracka in Wyandotte. He is the Clarence Dracka, who is a defendant in this case. There is one marked 23rd street, which is an error. It should have been 21st. I did testify that I talked with Louis Klein in Harry Klein's presence about some alcohol. I did this on more than one occasion at 9666 Grand River avenue. These conversations were around noontime in the spring of 1936.

I had quite a few such conversations. Those conversations related to my selling alcohol to Louis Klein. I could not say how much I sold in that manner, that is, with reference to the sales that were made in the presence of Harry Klein, though it was considerable.

I did testify the other day about some alcohol which went to the Mack Avenue Storage at 3454 Mack avenue, though I do not recall the name of the street where the alcohol went. It would arrive at the Mack Avenue Storage on Mack avenue. They would send it over to their other warehouse. I do not know the name of the street it was on. 3546 Beaufait street was the address. I could not say that I was receiving alcohol at that address on or about March 24, 1937. It was about that time. It was also being received there about March 6, 1937.

I believe I did see Mr. Braverman in Chicago on one occasion. I saw him at a bookie. I do not recall which one. That was approximately in the summer of 1936. I do not know what street it was on or the number of the street.

[fol. 295] Cross-examination.

By Mr. Frederick:

I do not recall what conversation I had with Mr. Braverman when I saw him in Chicago in the summer of 1936. It was not during the time I was receiving these telegrams we have described, but after that. At the time of this meeting, I had not had any telephone conversations with him, or received any merchandise that purported to come from him during that summer. From January 25, 1936 through March 11, 1936, I was not receiving alcohol from any other source, except Chicago. I was not engaged in the operation of any stills here during that time, nor was I purchasing any alcohol in Wayne County, Michigan, that I recall.

In the money order application, which is Exhibit 201, when I said "Balance tomorrow morning, if unable forward machines today, advise immediately Western Union so can make other arrangements," I do not recall what other arrangements I referred to. Evidently there was somebody that wanted to sell that merchandise when I referred to making other arrangements. That is somebody wanted to sell me merchandise here in Wyandotte or in Detroit. I did make other arrangements at a later date, though how much later, I do not recall.

Following March 11, 1936, which is the last telegram which has been introduced in evidence, I did have some further business relations with people in Chicago, though I couldn't say just when after that it was. It was a short time afterwards. I would say I was correct when I testified on direct examination that it was about a month or two months after that.

On these applications, the addresses appear just 21st street, and on one of them, 23rd street, though there is no street number given. I did give a number to the lady. None of these exhibits are in my handwriting. I have an independent recollection of each and every one of these exhibits. During the period of time covered by these telegrams, I sent no other money from the Western Union office. I do not know the name of the lady who wrote these telegrams. I do not know how many times I talked [fol. 296] with anyone in Chicago by telephone during the time covered by these telegrams. I do not recall whether

it was more than the one or two occasions that I have testified to.

I could not say how many times in my life I have talked with Mr. Braverman in person or by telephone. Following my meeting with Mr. Braverman, which was not in the fall of 1935, it was during the year 1935—more in the summer of 1935, I talked with him in person quite often. I have talked with him sufficiently, so that when I here testified that I talked with him over the phone I meant that I knew his voice and knew that the party I was talking to by phone was Mr. Braverman. I did testify that in a telephone conversation I had with him about February 15, 1936, Mr. Braverman told me that he was going out of business. So far as I was concerned, he did go out of business. Following this conversation, I did try to go into the alcohol business with him and was refused by him. He told me that he was no longer in the business; that he could not send me any alcohol. He also told me he did not know where I could get any alcohol. He did not make any other contact for me whereby I could get alcohol.

I did testify on direct examination that during the period of time covered by these telegrams, I went to 9666 Grand River avenue. This was not an unusual thing for me to do in those years. I used to go to that bowling alley quite frequently. At no time did I order any alcohol from Chicago at 9666 Grand River avenue. I went to 9666 Grand River avenue to discuss the sale of alcohol which I received from Chicago with Louis Klein. I went there to see Louis Klein and tell him either that I could not give him a delivery. I never went there to see about getting alcohol shipped in from Chicago. I used that as one of the places to sell the liquor that came.

Cross-examination.

By Mr. Cavanagh:

Some shipments were delivered to the Mack Avenue Storage which is located in Detroit. They have two warehouses. I could not say how large the one on Mack avenue [fol. 297] is. It is quite a large building and I rented space there. I do not recall how large a space it was. It was on the first floor and I paid \$25.00 a month.

The Roadway delivered it. The attendant at the warehouse unloaded or aided in unloading it and trucked it to

the room I had rented. It was up to me to get rid of it. I was not present when it was delivered. I did have arrangements to have the shipments handled that way. This was not included in my rental price. I paid no additional compensation for this service. It was a part of the warehouse service included in the \$25.00 a month I paid as rent.

I hauled it out of the warehouse in private automobiles for delivery to wherever I was going. My space was at the Beaufait Street Warehouse. The main office is on Mack avenue. The shipments would be addressed there, but would not be unloaded. The shipments would arrive at the Mack Avenue warehouse temporarily, and the driver of the Roadway truck would be told to take it over to the Beaufait Street warehouse. There was no additional payment made to the Roadway Transit for this service. The Beaufait Street warehouse is about six or eight blocks from the Mack Avenue warehouse. There were possibly forty or forty-five shipments consigned to the Mack Avenue warehouse. They were consigned to the Star Products, care of the Mack Avenue Storage. I could not say who at the Mack Avenue Storage told the Roadway drivers to take them to Beaufait Street, though I suppose it was whoever was at the desk.

I was not present at the Beaufait Street warehouse when the shipments came in. The Beaufait Street warehouse is quite a large building. I do not know if they had more than one warehouse man over there or not. I could not say whether there was more than one man who handled this merchandise for me. I knew when the merchandise arrived, because Mr. Dracka would forward the bill of lading from Chicago to his address at Wyandotte and the shipment would arrive the following morning. If the bill of lading arrived at Wyandotte in the morning, the shipment as a rule would be delivered to the Mack [fol. 298] Avenue Storage about four o'clock the same afternoon.

I would go to the Mack Avenue Storage on Mack avenue and ask the young lady in the office if anything arrived. If it had, she would give me the freight bill which she had paid. I would reimburse her and drive over to the warehouse where I had rented space. The Mack Avenue Storage did not advance these charges, because I had left \$10.00 deposit there at the time to pay the freight bills.

This was sufficient to cover the Roadway charges on all of the shipments. By reimbursing her for each shipment, I always had a \$10.00 deposit there. I never told the young lady at the Mack Avenue Storage what the merchandise was, nor were ever any questions asked me. I never told anyone at the Beaufait Street warehouse, nor was there any inquiry made of me.

I do not know the name of the man that handled this merchandise at the Beaufait Street warehouse. I did have a conversation with him on occasion, though never concerning the merchandise. These shipments came in cases and the cases would be trucked into my room. It was a large room. I did not have the entire room, but just a certain amount of floor space in the corner. There were other tenants in that room with me. I did not have a key to that place. After the cases had been brought in, I would open up the boxes. The only tool at the warehouse was a small wrecking bar. I would load the cans in the automobile and dispose of it. I left the cases at the warehouse. I sold several of them to the warehouse company. The man in the warehouse saw me opening these boxes. There never was any conversation as to their contents. I do not know if he ever knew their contents. There was on occasion leakers at the Beaufait Street warehouse. The warehouse man was present at the time, though no inquiry was made concerning the odor.

I did have a conversation with Mr. Stevens outside of the warehouse in Chicago on one occasion. That was at the restaurant. I never spoke to Mr. Barrett.

In this room I had at the Beaufait Street warehouse, there was all kinds of merchandise. There were other [fol. 299] boxes. I do not know any of the other tenants of this room. I did see them in the room upon occasions, but when they were there I would go away and come back later. The warehouse authorities did not advise me to do so. I worked over there more or less secretly. There were a lot of other tools there besides the drawbar. There was a nail puller and different tools to open boxes with. I did not have any band ironing equipment, stencils or cartons.

There were a lot of boxes left there that I did not sell to the warehouse. I do not know how many. I never shipped any back. I never gave any instructions to the warehouse as to what disposition was to be made of any

equipment that was left there. So far as I know it was never removed from the Beaufait Street warehouse.

I ceased operations here, I think, in the spring of 1937. At that time I ceased operations entirely. I left the tools and boxes there. I paid my rent, either to the young lady, or young man that was in the office. I never paid any money to the warehouse men. I don't think I had a lease on these premises; it was just a month to month proposition. I think on one or two occasions, I had them go to the Roadway and pick up a shipment. There was no inquiry of me at the time I did this.

At no time did the authorities of the Mack Avenue Storage make inquiry of me as to what business I was in. I cannot remember just what I told them as to the nature of my business. If I recall correctly, I told them I was handling carpet cleaning fluid.

Cross-examination.

By Mr. May:

At the present time I have a small percentage in a night club and a small percentage in a billiard room in Toledo. It is a cigar store and barber shop.

On Exhibits 195 to 207-A, I signed my signature as "Wholesale." I did not put underneath the "21st Street." The young lady did not put it there at my direction. I signed it "Wholesale." It came to be there because that [fol. 300] is Mr. Dracka's address. He was my partner. I know Dave Fidler and have sold him alcohol on two or three occasions. I believe I know his brother, Hymie Fidler. I never sold him alcohol. I sold Dave. I know he had a brother, but I do not know what his first name was. It may have been Hymie, I don't remember. I couldn't say whether Dave's brother worked for him or not.

I was in the bowling alley at 9666 Grand River avenue in the summer of 1936. I was around there in the summer of 1936. It may have been when Harry's place was next door there. I could not say as to whether this bowling alley was closed in the summer of 1936 or not. I don't remember.

The first time I talked with Louis Klein, his brother, Harry, participated in the conversation. In 1936, after I had ceased getting alcohol from Chicago and went up

to the bowling alley, Harry Klein did not participate in my conversations with Louis Klein. Harry Klein originally introduced me to Louis Klein. Louis Klein had a place of business on Hasting street. I never delivered any alcohol to him there. I used to go to Hastings street to collect my money. Sometimes I sent to his place on Hastings street to take the orders for alcohol and sometimes I would meet him at 9666 Grand River.

I sold the majority of the alcohol that I was able to get in 1936 to Louis Klein, though I haven't any idea how much it was. I have no idea of what the total amount of money was that I sent to Chicago. I saw Louis Klein on Grand River between 12:30 and 2:00 P. M. That place opened up in the morning. While I wouldn't say the bowling alley was open, the entrance to the building was open at 9:00 o'clock in the morning. I couldn't say when the bowling alley opened.

I did go up to Fidler's place on 12th and Blaine. I sold him alcohol up there two or three times. His place was on Blaine. As to whether it was near 12th, I do not know what the numbers were. He had a malt store there and sold caps for beer bottles. I couldn't say whether he sold alcohol out of there or not. I drove the car with alcohol [fol. 301] in it to these premises, and he would take the car and drive it away. I do not know who would come and drive the car away on these occasions.

I do not have a bookie down at Toledo. They have a bookie, but I am not connected with it. I did not put any money in those stills with Clarence Dracka. I did not so testify. The first still I had was down in Monroe county. I put the money in that with William Keller. The second still was in Romulus. I did not have any money in that. I had money in the still at Keller's Monroe county. All told, I had \$1,000 in it. Dracka was not associated with that still. I could not say as to whether Louis Klein was arrested on Hastings street with some of my alcohol in his place. I could not say whether he was arrested at any time with some of my alcohol. I remember him being arrested, but it wasn't my alcohol. I did not discuss the arrest with him. Yes, we talked about it. Yes, we did talk about it. It was not alcohol that I sold him. The last time I talked with Louis Klein about selling alcohol was after he was arrested and quite a large quantity of alcohol had been confiscated. He had no merchandise. I do not know

just when this was. I think it was in 1936. I do not know if it was in the early part of 1936.

I was in business with Clarence Dracka at the time he received his injuries to his hands and face. That was not the result of being in an explosion in a still. It was an explosion in the well. It was in the well that he was digging for the still. This was in the summer of 1935. As a result, Dracka could not do any manual work. As I recall, he did not do any more work in 1935. His hands were in such condition that he could not lift anything.

Re-direct examination.

By Mr. Hopping:

Government's Exhibit 56 is a delivery receipt for some of the alcohol. The address 3454 Mack avenue appears on it. That was the main office. Upon receipt of the shipment, the Roadway Transit Company delivery truck would pick up the five boxes, take them to the office on Mack avenue, get [fol. 302] the money for the freight charges and then take it over to the warehouse on Beaufait, where we had space rented. The same would be true of the shipment shown on Exhibit 55, which is dated November 28, 1936. I was never present when anyone in the warehouse signed for the Roadway. By the time I got there, the Roadway truck would have gone. I would find the alcohol in the space we had leased on Beaufait street.

I recognize Government's Exhibit 161 as a picture of Mr. Johnson. I do not believe I know his first name. I first met him in Wyandotte during 1936. I testified that I went to Chicago with Clarence Dracka in November 1936. I met Johnson once before that. After Clarence was in Chicago, I did talk with him about this Johnson. Clarence said he was getting merchandise through him. That was the merchandise which was shipped to me at the Mack avenue place. Also, some of it to 3230 Biddle street. Clarence paid Johnson for the alcohol handled in this way.

Mr. Hopping: I offer in evidence Exhibit 161.

Mr. Frederick: I think we should object to the exhibit, it not appearing to the present date—the proper identification of the individual pictured thereon, as being the one who is talked about by this witness. In other words, this exhibit looks like that man, but whether it is the defendant

named in this indictment, has not been sufficiently shown. It might be his twin brother. It might be someone who looks like him. It might—one of the other defendants here has identified this picture as being Rosario Tardino. We submit it is incompetent evidence at this time.

The Court: There are two defendants by the name of Johnson in these indictments. Ellis Johnson has not been apprehended.

Mr. Hopping: That is correct, your Honor.

The Court: Jesse E. Johnson pled guilty to the indictment.

Mr. Hopping: I will ask the witness a couple of questions:

I was present in the courtroom when this trial started and saw the defendant Jesse E. Johnson, who appeared here. [fol. 303] That was not the Johnson I referred to in speaking of Exhibit 161. Nor was he the one I saw in Wyandotte before going to Chicago. In each instance, when I speak of a Mr. Johnson, I am referring to the Mr. Johnson, whose picture is Exhibit 161. It was he that I saw in Wyandotte and about whom I talked with Clarence Dracka. I did testify before the Grand Jury in this case in regard to a Mr. Johnson. At that time I testified about the same Mr. Johnson who is pictured in Exhibit 161. I did not testify in the Grand Jury regarding the other Mr. Johnson.

The Court: I think I will receive it.

Mr. Frederick: Exception.

Mr. May: The same objection and exception for defendant Frank.

Mr. Fischer: The same objection and exception as to defendants Barrett and Stevens.

Cross-examination.

By Mr. May:

I did testify a few minutes ago that Louis Klein was arrested with alcohol other than that I sold him. I do not know the name of the man that sold it to him.

Cross-examination.

By Mr. Cavanagh:

The general offices of the Mack Avenue warehouse are on Mack avenue. I think they also have storage space.

there. The way I happened to go to the Mack Avenue warehouse was because I picked up a telephone book and looked up "Warehouses." I made arrangements to rent space the first time I went there. When I first went, I did not know they had a warehouse on Beaufait, I just asked to rent space and told them what for. They said they had no available space on Mack avenue, and then took me to Beaufait street.

The reason the shipments from the Roadway were not delivered directly to the Beaufait street address, as I understand it, was that such was the custom. The office is on Mack [fol. 304]avenue and everything goes through the office. There would be no one to receive it at Beaufait street, unless somebody went from the Mack Avenue warehouse over there. The warehouse man I spoke about as receiving the shipment was over at Mack avenue. He would go to the Beaufait street address with the driver of the Roadway truck. He never aided me in opening these boxes. He would have to go and open the door. A lot of times I would go to the Mack avenue office and tell them I wanted to get in. They would inform me there was somebody at the Beaufait street address and I would then go over and the door would be open. If there was room enough, I would drive my care in and proceed about my business without talking to them. The driveway at the Beaufait street address was not enclosed, but I could back my care to within a foot or two feet of the space I occupied. The man at the Mack Avenue warehouse never helped me load these cans in the back of my car.

Cross-examination.

By Mr. Frederick:

The exhibits I identified as the telegrams are not the only ones I sent to Chicago. They are the only ones I sent to the addressee, Eva Braverman. I did not send any others to Chicago during the same period of time. I sent other telegrams to Chicago, but not money orders during this time. I sent the other telegrams to Mr. Braverman. I remember previously testifying upon direct examination that I sent the money in the name of Wilson.

Q. How do you explain your answering that question in the name Wilson and it appearing upon these exhibits that the name "Wholesale" was used?

A. The name "Wholesale" just escapes my mind; that is all. In fact, the only person that ever called me "Wholesale" was Mr. Braverman and I signed the name "Wholesale" so that he would know it was from me.

Q. They why did you testify upon cross-examination before, or on direct examination before, that you used the name Wilson?

A. I couldn't say.

[fol. 305] Q. You were just as positive in your answer at that time as you are in your other testimony?

A. No, I am more positive now that I see it.

Q. At the time you made that answer you were positive of its truthfulness, were you?

A. I thought that that was the name that was used but I see now that it was not.

I met the man named Johnson in 1936. That was after Mr. Braverman quit the business. I never met him with Mr. Braverman.

Redirect examination.

By Mr. Hopping:

The alcohol Louis Klein was arrested with came from Chicago, though I do not know who sent it. I know there was a truckload, because Louis told me.

HINTON, LOUIS W., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hopping:

I am a special investigator in the Alcohol Tax Unit and have been employed in that or similar work for the government for ten years or more.

I participated in the investigation in this case in Cleveland, Ohio, and other places. My first contact with this case was in the Spring of 1939 in Cleveland, Ohio.

On April 11, 1939, Investigator Lancaster and I went to the dock of the Roadway Transit Company, located at 1620 East 41st Street, Cleveland, Ohio. This was about 5:00 P. M. I went in the office and had a conversation

with Mr. Moore, the manager of the dock. We kept the place under observation. About 5:00 P. M. we saw a Ford truck bearing Ohio, 1939, plates, 5G962, driven by John Carbaugh, Jr. He is the same man who has been present in the courtroom during the trial. There was also another [fol. 306] brother of his in the truck. I know the father of John Carbaugh, Jr., who has here testified.

At the time I mentioned the truck which was a stake truck, drove into the building, empty. At 5:10 P. M. it was driven from the building loaded with a number of wooden boxes similar to that which appears here in court as Exhibit 73. It was driven to the home of John Carbaugh on East 66th Street, Cleveland, parked in the alley alongside of the house for a few minutes. John Carbaugh and the two sons then got in and drove it to a gas station on the corner of 66th and Huck Avenue. The truck was serviced.

Mr. Frederick: If the Court please, I wish at this time to note, in behalf of defendant Braverman, an objection to any testimony relative to the acts and conduct of these other co-defendants, not committed in his presence and as not being binding upon him and request that the jury be so instructed.

The Court: Objection overruled for the present.

Mr. Frederick: Exception.

Mr. Cavanagh: May I have the same objection and exception, if the Court please?

The Court: Yes. Do you expect with this witness to go all over—

Mr. Hopping: We expect to show some of the operations of Mr. Carbaugh as he testified to but it also leads to other persons named as defendants in this case, your Honor. We expect to show by this witness—

The Court: I won't say that it has not been disputed as to what Carbaugh said.

Mr. Hopping: It starts there, your Honor, and continues on, on matters that have not been covered.

Mr. Frederick: In order to save interruption subsequently, I make the general objection to all of the testimony that this witness may subsequently give in that regard. That is, his reciting as to his observations as to what John Carbaugh did.

The Court: No, I do not take any omnibus objections like that.

Mr. Frederick: Very well.

[fol. 307] Mr. May: I would like the record to show the same objection and exception as to defendant Klein.

Mr. Fischer: And the same objection and exception as to defendants Stevens and Barret. And also request at this time to ascertain what the witness has, what notes the witness has in his hands.

The truck was then driven to a two-car garage on a farm on Miner Road in Highland Heights, Ohio. Two men came from the house. The doors were opened, and the truck backed part-way into the garage. The boxes were unloaded and the truck re-loaded with empty boxes and returned to the home of John Carbaugh.

Government's Exhibit 193 is a picture of Sebastian Ardiro, the farmer on the farm on Miner Road.

Government's Exhibit 194 is a picture of Tony Arcodia, the other occupant of the farm. Both these men assisted in the unloading. They are both defendants in this case.

Mr. Frederick: I wish at this time to note an objection and ask that the jury be instructed to disregard, as to defendant Braverman, any testimony as to Sebastian Ardiro, as related by this witness.

The Court: Objection overruled.

Mr. Frederick: Exception.

We returned to the premises on Miner Road and kept him under observation the rest of the evening and the following day. It was about a week later I saw the same truck. In the meantime, on April 13, 1939, at about 6:00 P. M., accompanied by Special Investigator Norris, I saw Julius Weizer drive a 1934 Ford coupe into the premises on Miner Road, which had 1939 license plates (Ohio) KY-589. The Julius Weizer I saw is a defendant in this case. The premises on Miner Road was the farm where I had previously seen Tony Arcodia and Sebastian Ardiro. The house and garage are approximately 300 feet from the road.

The car was driven to the same doors of the garage as had been the truck which I previously saw drive in and unload the boxes. Again two men came from the house and opened the doors of the garage. Prior to Julius Weizer driving into the garage, a woman got out of the car and walked into the house. The car was driven in and the doors [fol. 308] closed. The garage doors were opened from the inside about ten minutes later, and the car was driven out. The woman came from the house, got in the car with Julius

Weizer, who drove into Cleveland. Special Investigator Norris and I followed in a government car.

At the corner of Mound Overlook and Mayfield Street, the woman got out of the car. We drove alongside the car and Special Investigator Norris directed Weizer to pull to the curb as we were Federal officers. We were a little ahead of his car. Weizer drove into the side of the government car, damaging both right fenders and proceeded up Woodland Avenue. We followed him at a high rate of speed about two miles. In making a sharp turn, he skidded and bent the rear wheel. Julius jumped from the car and ran. I stayed with the car and Special Investigator Norris pursued Julius Weizer. About a half hour later, Special Investigator Norris returned to the car and he had been injured. We inspected the car and found it to contain 100 gallons of illicit alcohol in five-gallon cans. They were in cardboard containers. There were no tax stamps on the cans. This was the car I had seen at the farm previously. This Ford had special springs on it. When empty it was riding very high. When it went into the garage, it was about a foot between the rear fenders and the back tires. When it came out, it seemed to be loaded heavy. I did not see any cans put into the car.

Q. Did you see any more activity on that day?

A. Nothing except when we searched the car after making the seizure, in between some of the cans that were—this was a Ford coupe and had a rumble seat opening from a spring—that is, the rumble seat opened from a spring inside the cab part of the coupe—I opened it and in between some of the cans, kind of wedged in between them, was a pine board and on that pine board was a stenciling—

Mr. May: I object to what was on there.

The Court: Go ahead.

A. "Care of Carbaugh and Sons."

[fol. 309] Mr. May: I will object to what was on the board. The board itself is the best evidence.

The Court: Objection overruled.

Mr. Frederick: And the objection and exception as to defendant Braverman.

There were registration cards in the automobile. I did not examine them, because there was no registration card. Following this, we kept the premises on Miner Road under observation almost continuously. On the 13th we

had the premises at 10734 Woodland Avenue under observation and I saw Rosario Tardino, a defendant herein, with a Ford coach bearing 1939 Ohio license plates KY-592. We followed it to an address on Quincy Avenue. Exhibit 148, Ohio registration 1939 license No. KY-592, was then introduced in evidence without objection. This automobile was registered in the name of Rosario Tardino, 10904 Woodland Avenue.

About 7:30 A. M. on April 24, 1939, I was at the dock of the Roadway Transit Company in Cleveland with Special Investigator Lancaster and Norris. We saw John Carbaugh and his son, John Carbaugh, Jr., drive to the Roadway dock with a Ford truck, license KY-592. The truck was empty when it was driven inside the building. At 7:50 A. M. John Carbaugh, Sr. and son, left the dock at which time their truck was loaded with boxes. We followed them over the same road to the premises on Miner Road. As before, it backed up to the garage, two men from the house opened the door and assisted in unloading the boxes into the garage. The truck was reloaded with empty boxes and returned to the Carbaugh home, where the boxes were unloaded in the backyard.

About 8:30 P. M., this same day, I observed a Model A Ford coupe, bearing 1939 Ohio license plates DL-118 drive into the garage on Miner Road. This was also equipped with helper springs and appeared to be empty when driven into the premises. As the car was driven down Miner Road toward the premises it was followed by Rosario Tardino driving the Ford coupe bearing 1939 Ohio plates KY-592. After this car drove into the driveway, Tardino drove slowly past for about a half mile on Miner Road and turned [fol. 310] around and drove back slowly past the place and parked on the side of the road at the corner of Landers Road and Wilson Mills Road, about a half mile from the entrance to the farm. At that time I could not tell the driver of the car having license DL-118. The car that drove into the garage remained about ten minutes. It then drove past Tardino. It appeared heavily laden. Tardino turned on his lights and followed down Cedar Hill in Cleveland.

Tardino turned left and the Ford coupe continued to 7306 Carnegie Avenue. This is a double frame dwelling. The car drove into the side drive of this address at about 9:30 P. M., and parked alongside the rear door of the premises.

The following day, April 25th, at about 7:25 P. M., Special Investigator Norris and I had 7306 Carnegie under observation. We observed the Ford coupe bearing license DL-118 driven east on Carnegie. There was a woman sitting on the steps and the Ford coupe pulled up in front and stopped. The woman motioned to him on up Carnegie. The driver of the car then drove east on Carnegie.

The farm where I saw Ardiro and Arcodia is east of Cleveland. About 8:00 P. M. the same day I again saw this car. Special Investigator Norris and I got in a government car and drove to Woodland Avenue, the home of Rosario Tardino. We did not see the car DL-118, so we drove out Miner Road. When we arrived, Rosario Tardino was parked in the same place he had been the night before, in the Ford coach, bearing Ohio license plates KY-592. A few minutes after we arrived, the Ford coupe DL-118 was driven from Miner Road onto Wilson Mills. It appeared to be heavily laden. As it passed Tardino's car, he followed it into Cleveland. Both cars drove into the premises located at 7306 Carnegie. I could not identify the driver of the car bearing license DL-118 on this occasion.

I did not see anything in particular on the 26th of April.

On the 27th, at 7:50 P. M., we were at the Roadway Transit dock in Cleveland on East 41st Street and saw John Carbaugh's truck bearing license 5G962 drive into [fol. 311] the dock, drive away empty. He parked it in front of his home on 66th Street, where it remained all night.

On April 28, 1939, at 6:30 A. M., I saw John Carbaugh, Sr. and John Carbaugh, Jr. drive to the Roadway Transit dock in the same Ford truck. After waiting about ten minutes, they drove away with a number of wooden boxes and followed the usual route to the garage on Miner Road, where they were unloaded. On this occasion, we followed the truck back loaded with empty boxes.

The next occasion that I saw something in connection with this case was on May 3, 1939, about 3:50 P. M., when John Carbaugh and his son drove to the Roadway Transit dock. He picked up a load of wooden boxes and took them to the garage on Miner Road.

On May 4, at 10:25 P. M., Special Investigator Norris and I, having parked the government car, concealed ourselves in some bushes alongside the drive leading into

the premises on Miner Road. I saw the Ford DL-118 driven down on Miner Road followed closely by the Ford coach license K-592. The loaded Ford coupe DL-118 was driven into the premises. A flood light was put on at the house. Two men came out, opened the garage doors and the car was driven inside. The flood light remained on while the car was in there. We could see the Ford coach K-592 drive down Miner Road possibly a quarter of a mile, turn around, drive back and park in the driveway leading to the premises, where it remained with its lights extinguished until the car in the garage returned. Angelo Porello, a defendant in this case, was driving KY-592 at this time. I could not see who was driving DL-118. DL-118 was driven out of the garage and followed by the other cars drove over Miner Road.

After these cars left, we went to 7306 Carnegie in Cleveland. Upon arrival, we saw the Ford DL-118 parked at the rear of the premises and two men were working between the car and the rear door of the house. We could not see what they were doing, but could see them passing between the car and the door of the house. The Ford coach KY-592 was parked on Carnegie about one hundred feet from the driveway leading to the premises and Angelo Porello was [fol. 312] seated in the car with a young woman. About 11:40 P. M. the Ford coupe DL-118 was driven from the premises on Carnegie. Angelo Porello followed in KY-592. They again went to the premises on Miner Road, and as before Porello parked and the coupe DL-118 was driven into the premises. At that time Julius Weizer was driving. As before, the men came from the house, opened the garage door and DL-118 was driven into the garage.

They left Cleveland at 11:40 P. M. and arrived at the farm about 12:35 A. M. on May 5th. As before, Angelo Porello parked on Miner Road. When the Ford DL-118 returned, Porello followed the car to Cleveland. They drove to 7306 Carnegie. Porello parked around the corner, got out and walked over to 7306 Carnegie. After a few minutes, Weizer and Porello returned to the coach KY-592 and they drove east up Carnegie.

Mr. Hopping: At this time, I offer in evidence Government's Exhibit 154, which has been previously identified as the registration, 1939 Ohio license No. DL-118, State of Ohio, for a Ford coupe, 1931.

Mr. May: I will object to it, if the Court please, on behalf of the defendants Klein and Frank, for the reason, there is no connection showing between this exhibit and these defendants, and it is not material to this case, but goes to the indictment charging the other defendants, and not the indictment charges of that of Harry Klein.

The Court: Objection overruled.

Mr. May: Exception.

Government's Exhibit 154 does state that license DL-118 was registered in the name of John Papa, 2197 Murry Hill Road, Cleveland. I went to that address, but could not find any John Papa there. I never was able to locate him.

On May 8th, at 9:05 P. M., Special Investigator Norris and I had 7306 Carnegie under observation and saw a Ford coach, the license number of which I would not get, driven into the premises. When it drove in, it appeared to be light or empty. Shortly afterwards it drove out and south on 71st Street, at which time it appeared to be heavily laden. We did not follow it.

[fol. 313] At 9:40 P. M. on the 8th, I observed Julius Weizer driving a 1934 Plymouth coupe bearing 1939 Ohio license plates MX-873 from the premises at 7306 Carnegie in a westerly direction. It appeared to be heavily laden. We lost it in traffic.

On May 9th, Special Investigator Norris and I saw Julius Weizer drive the Plymouth coupe MX-873 to the back door of the premises where it remained about ten minutes. At 9:30 P. M. it was driven west on Carnegie and we lost it in traffic. At 11:00 P. M. of the same day, Julius Weizer drove into the premises on Carnegie in the same Plymouth coupe. At 11:10 of that day, Julius Weizer drove from 7306 Carnegie in an Oakland sedan, bearing 1939 Ohio plates KC-453. I followed him over on the west side of Cleveland and lost him.

At 9:35 P. M. on May 10th, I observed Julius Weizer drive the same Plymouth coupe MX-873 into 7306 Carnegie, where he remained until 10:15, when he drove out. The car at this time appeared to be heavily laden. At about 7:30 A. M. on May 12, 1939, John Carbaugh, Sr. and John Carbaugh, Jr. drove the Ford truck 5G962 to the dock of the Roadway Transit Company, and picked up a load of boxes which they took to the same premises

on Miner Road. He brought back a load of empty boxes, which were unloaded in the back yard.

On May 15, 1939, at 9:30 P. M., I saw Julius Weizer drive a Plymouth coupe MX-873 into 7306 Carnegie Avenue. After about five minutes, he drove from there. We followed him down to Woodland Avenue. Between 21st and 22nd Streets, he pulled up at the curb and parked. A man was standing there. He opened the door and took out two five-gallon containers similar to the cartons that had been in the car at the time we made the seizure of Julius Weizer. They appeared to be heavy objects. The men carried them between two buildings. Julius Weizer then drove on.

Q. Did you ever see packages similar to those on other occasions?

A. I have.

Q. From your experience, what are they used for?

[fol. 314] A. For the transportation of alcohol.

Mr. May: I will object to that answer and ask that be stricken, what he saw on other occasions.

The Court: Motion denied.

Mr. May: Exception.

Julius Weizer returned to the premises on Carnegie. Julius Weizer was arrested three days later, that is, on May 18, 1939. I saw him while he was in custody in Cleveland and participated in taking a statement from him.

Q. I offer in evidence Government's Exhibit 153 which has been previously identified as the Ohio registration, 1939 Ohio license, MX-873 for a '34 Plymouth coupe.

The Court: It may be received.

Mr. May: I would like to object to it, if the Court please, if I may see it to make my objection.

I will object to it, if the Court please, on behalf of the defendants Klein and Frank, for the reason that this goes to the indictment charging other clients other than Klein; that it has no material connection between Klein and the indictment charged herein.

The Court: It may be received.

Mr. May: Exception.

Mr. Hopping: I offer in evidence Exhibit 149, which was previously identified as the Ohio registration, 1939, license KC-453, in the name Leonard Spigutz, 7306 Carnegie.

Mr. May: Same objection, if the Court please, as to the last exhibit.

The Court: It may be received.

Mr. May: Exception.

In looking at Government's Exhibit 153, which is Ohio license MX-873, I see that it was issued to Steve Jacobo, 2197 Murry Hill, Cleveland, Ohio, which is the same address as appears on the registration of John Papa, DL-118. I went to the address, but could not locate Steve Jacobo there. I was never able to locate Steve Jacobo.

On June 2, 1939, a 6:45 P. M., I saw the Carbaugh truck driven to the dock empty. After about ten minutes, he drove away loaded with the same kind of boxes I had seen on previous occasions. They were taken to the premises [fol. 315] on Miner Road and returned with a load of empty boxes. These were taken to the Carbaugh residence on 66th Street and unloaded in the backyard.

On June 5, 1939, about 9:20 P. M., I observed Julius Weizer drive into 7306 Carnegie Avenue in a Plymouth coupe, license MX-873. He parked at the rear door. As he drove in, Leonard Spigutz, who was sitting on the front porch, got up and walked through the house towards the rear of the premises. The rear door was opened from the inside. I observed two men working between the car and the rear door. That was the same Leonard Spigutz who is a defendant in this case.

On June 6, 1939, at 9:40 P. M., I was with Investigator Norris and we observed a Ford coach drive into 7306 Carnegie, drive to the rear door, two men walked back and forth between the car and the door. The car was driven from the premises and lost in traffic.

On June 9, 1939, at 9:00 P. M., a Dodge coupe MR-538 was driven to the premises, remained until 9:25, when it was driven from the premises heavily laden. It was a Plymouth coupe bearing license number MR-538. At 10:45 P. M. the same day, Julius Weizer drove into the premises with a Plymouth coupe MX-873. As on previous occasions, Leonard Spigutz was sitting on the porch. He got up and went into the house. I could see him walk through the house toward the rear. I then observed two men working between the car and the rear door. The Leonard Spigutz is the same one who has appeared here and pled guilty. At 11:00 P. M., Julius Weizer drove

from the premises with the Plymouth coupe and disappeared on 71st Street. We did not follow him. This was on June 9th.

On June 14th, at 3:50 P. M., John Carbaugh and his son picked up another load of boxes at the Roadway Transit dock and took them to the premises on Miner Road.

On June 26, 1939, I observed Julius Weizer drive a Plymouth coupe, MX-873. We followed him to his home on 142nd Street.

On July 18th, I observed Julius Weizer drive a 1936 Ford coach, license KY-592, east of Woodland Avenue.

[fol. 316] I did not participate in the arrest of Julius Weizer, Rosario Tardino, Angelo Porello, or Leonard Spigutz.

I am acquainted with the defendant Harry Klein, and talked with him subsequent to his arrest in this case in the Federal Building here in Detroit. He was advised as to his constitutional rights, and made a statement which he refused to sign.

Q. Do you recall at this time some of the things that he stated to you at that time?

A. I do.

Q. Will you tell us what Harry Klein, the defendant in this case, said to you regarding the case on trial?

Mr. May: If the Court please, I would like to request of the Government a copy of the statement taken from him, and possibly we can put the whole thing in and save a lot of time, and read the statement, or certain portions thereof, and I think we can save a lot of time.

The Court: Well, the Government can pursue its own course, I cannot compel it to do that.

Mr. May: Either all of it or none of it, but I don't think he can use part of it, therefore, I would like to have the opportunity to examine it.

The Court: You cannot compel him to show it to you now.

Mr. May: I note the objection and the exception.

The Court: Objection overruled.

Mr. May: Exception.

Mr. Frederick: I would like to note an objection at this time to the introduction of this statement and request that the jury be instructed that any statements made by the defendant Klein to this witness, be disre-

garded insofar as the defendant Harry Braverman is concerned. I also would like to ask at this juncture that the testimony of the witness as given to this point relating to the action of the other defendants be disregarded by the jury in the consideration of the case as against the defendant Braverman, there being action, and—

The Court: I cannot so charge the Jury now.

It was a 12 or 13 page statement. Exhibit 210 is the statement Harry Klein refused to sign. At the time it was made, there was also present Special Investigator Remstein and the stenographer.

[fol. 317] I also participated in taking statements from the defendants, Sebastian Ardiro, Tony Arcodia, Julius Weizer and Al Wainer. Government's Exhibit 211 is a statement taken from the defendant Allen Wainer. It is signed by him and he was advised of his constitutional rights before making it. I took this statement in Room 414 of the Federal Building on February 5, 1940.

Mr. Hopping: I offer in evidence Government's Exhibit 211. Your Honor, I believe that the defendant, Al Wainer, stated that he expected his attorney would appear here. I will let the offer stand for the present, if he wishes his attorney present.

The Court: Who is Wainer? Is that the man down there (indicating)? Haven't you an attorney here yet?

Mr. Wainer: No.

The Court: You are willing to go ahead this way without an attorney?

Mr. Wainer: Yes.

The Court: We can't delay the proceedings on account of the fact that your attorney is not here. You can't take advantage of that.

Mr. Wainer: My attorney is a State's attorney, and he is on the Grand Jury session.

The Court: I don't know anything about that. It may be received.

(Thereupon, the document previously marked Government's Exhibit 211, was admitted into evidence.)

By Mr. Hopping:

Q. Will you read the statement taken by you from defendant Al Wainer?

The Court: Now, these are statements made by these defendants after this matter was over, is that it?

Mr. Hopping: Yes, Your Honor.

The Court: Then, of course, it is the duty of the Court to instruct the Jury that any statement made by any defendant to these officers, is only binding upon themselves, because of the fact it is obvious that this conspiracy or conspiracies, if there are any, were complete and finished. [fol. 318] Mr. Hopping: This statement which I am now offering, was a statement taken after the conspiracy had terminated, and is offered as going only to defendant Al Wainer.

The Court: The Jury is instructed. I think I should do so now, upon reflection, but will do so, also, at the time of the charge to the Jury, that these statements, or admissions made by any of these defendants is only binding upon those who gave them, because after a conspiracy is terminated, no member of a conspiracy can make any declaration or statement or admission that is binding upon the other co-conspirators.

Mr. Hopping: May I ask the Court to state that these are distinguished from the other kind of statements of co-conspirators about which you have been speaking, the statements made in the course of the conspiracy?

The Court: I will charge the Jury on that when we get to it, but those admissions which have been introduced or identified by the witnesses for the Government, or statements or declarations made by some of the defendants here in the course of the conspiracy, of course, are binding upon all if they find that there was a conspiracy.

Mr. May: With reference to the statement you just handed this witness—

The Court: Of Wainer?

Mr. May: Yes. I would like to have the privilege of examining those statements, so we have an opportunity to make an objection to them. I haven't seen them yet. We don't know what is in them.

The Court: Well, any objection to it?

Mr. Hopping: They only go to the defendant, Wainer, as just stated by the Court. That is, this statement, 211, goes only to the defendant Wainer. The statement 210 goes only to the defendant Klein, being statements made after the termination of the conspiracy.

The Court: I will tell you what I think. I think they should be allowed to see them for this reason; without a doubt there are some statements in there—I don't know, but I am not far off; I don't think—without a doubt there are statements made in there by these defendants making them statements that would purport to be statements connecting others with the transaction here.

[fol.319] Mr. Hopping: Or connecting the person making it, with others, yes, Your Honor.

Mr. May: We would just like to see it, anyway.

The Court: Well, connecting a person with others would be different.

Mr. Hopping: I am tendering the Exhibit 211, to counsel for examination.

The Court: All right. Have you got any other statements?

By Mr. Hopping:

Q. Did you participate in taking the statements of any other defendants now on trial, Mr. Hinton?

A. No.

The Court: Let me see. He said he had Ardiro, Wainer, Weizer, and Arcodia?

Mr. May: And Klein, Your Honor.

The Court: Yes.

Mr. Hopping: And of those, he testified he participated in taking statements from only Wainer and Klein.

The Court: On trial? Those are the only two statements of defendants here on trial?

Mr. Hopping: Yes.

The Court: Then give counsel opportunity to go over them. Have you anything further with this witness?

Mr. Hopping: I believe that is all, Your Honor.

The Court: You may cross examine.

Mr. May: If the Court please, it is almost impossible for us to cross examine until we have examined these documents, because that would be all cross examination.

The Court: Well, the difficulty is, we lose so much time. We will be here till the 4th of July at this rate. We haven't gotten into the defense yet. So cross examine, and later on, if there is something else you want, you can cross examine. Or let someone else read them while

you are cross examining. Here are five lawyers sitting here.

Mr. May: My cross examination will only be on that point, of these statements. No other questions.

The Court: Is there any other to cross examine?

Mr. Frederick: I have no questions to ask, save as suggested.

[fol. 320] The Court: All right. Any other?

Mr. Fischer: We have nothing except as might come out of the statements.

Mr. May: I suggest he be excused and the next witness called, and we can recall him.

Mr. Hopping: May I ask one further question?

I did participate in the seizure of some distilled spirits in Cleveland. I cannot identify Government's Exhibit 212. I was not on that seizure. Exhibit 213 is a sample of alcohol taken from the Ford coupe, license KY-598, Ohio 1939 plates. It was taken from one hundred cans of alcohol in the car driven by Julius Weizer on April 13, 1939. I took the sample, placed the label on it, and initialed it. It was turned over to the chemist.

Government's Exhibit 151 was thereupon received in evidence. It is Ohio State registration of 1939 license MR-538, a 1939 Plymouth coupe.

The license number on Government's Exhibit 151 is shown to be registered in the name of Paul Castigliona, 3330 East 132nd Street, Cleveland, Ohio. I did not go to that address. I never located a Paul Castigliona.

Exhibit 152, the registration for Ohio 1939 license number KY-589 was then received in evidence.

Exhibit 152 shows the registration in the name of Joe Toth, 12634 East 112th Street, Cleveland, Ohio. I went to this address. That is the correct registration for the car in which I made the seizure for Exhibit 213. There was no Joe Toth at that address. At the time of the seizure, the car was driven by Julius Weizer. There was a woman in the car, who got out just prior to the seizure. I made no investigation of the address 20620 Belvidere Street, which appears on Exhibit 150. That is a registration for Ohio license number HR-418.

Nor did I make any investigation of the name which appears upon the registration of license NY-634, which is in the name of Paul Jagundowski, 3830 Superior Street.

[fol. 321] NEALON, E. J., being by the Clerk first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hopping:

I am a United States chemist, and have been so employed about twenty-two years. I made a chemical analysis of Government's Exhibit 213. It contained distilled spirits of ethyl alcohol, 179½ proof. I also made a chemical analysis of Government's Exhibit 212. It is distilled spirits of ethyl alcohol, 174 3/10 proof.

MOSES, THOMAS S., being by the Clerk first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ray:

I am a Special Investigator of the Alcohol Tax Unit, and have been so employed for the past ten years. During the past year I have been stationed at Cleveland, Ohio. I was assigned to this case on April 24, 1939. On that day I accompanied Special Investigator King to the Roadway dock in Cleveland, Ohio, where I observed John Carbaugh's truck arrive and later leave loaded with boxes. I followed it to Miner Road, where the truck was driven to the farm premises, backed up into the garage and the boxes unloaded. Later, the truck returned to Carbaugh's residence in Cleveland with empty boxes. The first time was on April 11th.

2. On April 14th, with special investigator Lancaster, I went to Neil Storage in Cleveland, Ohio, where a 1934 Ford coupe, KY-598 was stored, and in the rear of the coupe were 19 five-gallon cans of alcohol. I destroyed the alcohol, and in removing the cans from the cartons there was—it was a peculiar carton in that it was entirely solid, and when I opened the cartons up, there was a small block of wood on the top of the can, and this block of wood was wrapped in [fol. 322] a newspaper, and each of these newspapers bore a Chicago—

Mr. Frederick: I object to that, if the Court please. The papers are the best evidence of their contents:

The Court: Objection overruled.

Mr. Frederick: Exception.

A. Chicago Date Line, and I also removed a board from the Ford coupe on which was stenciled the name—

Mr. Frederick: I wish to note the same objection to the contents of the board which was removed.

The Court: What was this license number?

A. KY-589.

The Court: Ohio license?

A. Ohio, 1939.

The Court: This is the license number of what car?

A. This is the license number of the car Weizer was arrested in.

The Court: Weizer. All right.

Mr. Frederick: May I have a ruling on the objection?

The Court: Objection overruled.

Mr. Frederick: An exception.

A. "Carbaugh & Sons" was stencilled on the board that I took from the Ford coupe, KY-589.

I only remember about one board. I saw boxes similar to Government's Exhibit 71 on Mr. Carbaugh's truck. The last occurrence as on April 24th. At 8:20 in the evening of that day, I saw two cars on Miner Road. One having license KY-592 and one having DL-118, 1939 Ohio registration. I saw DL-118 driven into the Miner Road premises, where the boxes had been delivered by John Carbaugh's truck. Car bearing license number KY-592 continued north on Miner Road approximately one mile, turned around, turned out its lights, proceeded south on Miner Road slowly. DL-118 left Miner Road farm, and the two cars were driven to 7306 Carnegie. That is a two-family residence type building with garage. I do not know who lived there.

On April 25th, with Special Investigator Lancaster, at 7:45 P. M., I saw the same two cars go out to the Miner Road premises. DL-118 entered the driveway at the Miner Road premises and returned later to Cleveland, followed by [fol. 323] KY-592. At that time, I didn't know who was driving these automobiles.

On April 28th, I saw John Carbaugh's truck arrive at the Roadway Transit dock at 7:00 A. M. It was driven to Miner Road. A number of boxes were unloaded in the

garage. The truck, loaded with empty boxes, returned to Cleveland and parked in an alley beside Mr. Carbaugh's residence. He was unloading the empty boxes when I walked down and talked to him and purchased two of the boxes from him.

On May 3rd, with Special Investigator Norris, I saw John Carbaugh's truck arrive and leave with a number of boxes. It was driven to the Miner Road premises, the boxes unloaded into the garage, and the truck returned to Cleveland.

On May 4, 1939, with Special Investigator Norris, I saw Julius Weizer driving KY-592, accompanied by Rosario Tardino and another man I do not know. The car was being driven in the vicinity of downtown Cleveland at that time.

On May 5th, with Special Investigator Lancaster, at 12:25 A. M., I saw DL-118 and KY-592 driven north on Landers Road and Mayfield Road. This was about a mile to two miles from the Miner Road premises. I returned to Cleveland and took a position on Cedar Road, where there is a traffic light at the intersection. I there waited until the cars drove down to this traffic light, where they stopped. Julius Weizer was driving DL-118 and Angelo Porello was driving KY-592, accompanied by another person, who I do not know. After they stopped at the light, they continued on Cedar Road, and I went to 7306 Carnegie, where I saw them enter the premises. The intersection I speak about is at Surrey Road and Cedar Road, and was approximately 18 miles from the Miner Road premises.

On May 17, 1939, at 9:25 P. M., I was at 2260 Rockwell Avenue. This address was known to me as an alcohol drop used by blind pig operators. I saw DL-118 parked in front of this address.

Q. Was there anybody in that car?

[fol. 324] A. Not at that time. A short time later I talked to Special Investigator Lancaster and then drove around the block and saw Angelo Porello and Anthony Ladranicks from Chicago in a car, HL-418, I believe, parked on 24th Street. And beside this car was a Ford coupe, and license NY-634 which I knew to be connected with the 2260 Rockwell Avenue and the 1399 East 24th Street places.

Mr. Frederick: I object to that and ask it to be stricken the statement with reference to the car, his knowing to be connected with, as being a conclusion.

The Court: No, it may stand.

Mr. Frederick: Exception.

I had never seen the car HL-418 before. As to the other automobile, I had seen many deliveries at Rockwell Avenue, and saw them parked at 1399 24th Street practically daily for at least two months.

Q. Had you seen who had driven it previously?

A. Yes, sir.

Q. And who did?

A. Philip Cantella and Fred Giordano, another defendant. The car HL-418 then was driven north on 24th Street to Rockwell Avenue and turned to the left or west towards 2260 Rockwell and stopped directly across from that address and I pulled up beside the car and took Mr. Porello in custody at that time. At that time he was accompanied by this Anthony Ladranicka who was from Chicago. Several minutes later the car NY-634 came from the west, which was the opposite direction of HL-418 had been driven and I stopped that car and in that car was Julius Weizer and Philip Cantella.

Q. What did you stop that car for?

A. Because at that time I knew that Nick Giordano had made a delivery of ten gallons of alcohol to 2260 Rockwell Avenue.

Q. In what automobile?

A. In DL-118.

Q. Then what happened?

A. I took Nick Giordano to the Central Police Station and placed him in there for safe keeping, talked to him on the way down, at which time he told me—

[fol. 325] Mr. Frederick: I object to the conversation and statement made by Nick Giordano for the same reason as noted on the previous statements, co-defendants, if made in the presence of the defendant that they can only be considered as against the party making them.

The Court: When was this?

A. This was in—I talked to Giordano? That was on the 17th of May, 1939.

The Court: Was he under arrest at that time?

A. Yes, sir.

The Court: Is that G-i-o-r-d-a-n-o?

Mr. Ray: Yes, Your Honor.

The Court: He pled guilty to count 3 in one indictment. Well, it may be received, subject to the objection. Any statement made by this man after his arrest—and such statements are only binding upon himself and not binding upon any others and he having pled guilty, it isn't of any value at all.

Mr. Ray: We will waive production of the statement and pass that.

Q. Now, Mr. Moses, I show you Government's Exhibit 155 which has been previously identified as a State of Ohio automobile registration in the name of Paul J. Gozdowski, 1338 Superior Street, Cleveland, Ohio, and ask you whether you had gone to that address previously, the registration being NY-634?

A. I didn't go to that address but I do know that at that time this car was the property of Paul J. Gozdowski. He had various addresses around. I don't know about that.

Mr. Fischer: I will ask that the latter part be stricken unless he knows and tells what he knows about the man.

The Court: Unless you connect it up, I will strike it all out.

Q. Mr. Moses, this is one of the automobiles, is it not, that you had observed during the course of your investigation, NY-634?

A. That is the car I had seen making deliveries of alcohol to 2216 Rockwell Avenue on a number of occasions.

Mr. Ray: I offer Government's Exhibit 155. I understand there are no objections. The Government offers Exhibit 155.

The Court: It may be received.

[fol. 326]. Cross-examination.

By Mr. Frederick:

On April 11th, when I went to the Roadway Transit dock, I was accompanied by Special Investigator King. Mr. Hinton was down there. Mr. King and I were in one car and Mr. Hinton and Mr. Lancaster operated another car. I do not know where Mr. Hinton and Mr. Lancaster's car was. I know he was down there because I saw him. I saw him come from the Roadway Transit dock about a minute after the Carbaugh truck left. In following Mr. Carbaugh's

truck, the car I was in was behind it part of the time and part of the time Mr. Hinton was. We did not follow directly after Mr. Hinton's car. Most of the time there were other vehicles between the car I was in and the truck Mr. Carbaugh was operating. I was not always able to view the car in which Mr. Hinton was riding. I do not know where Mr. Hinton's car was or whether it went around the block or not. I did lose sight of the truck. When I lost sight of the truck, Mr. Hinton's car was behind the truck.

On the 24th of April, I was at the Roadway Transit dock with Mr. Lancaster and saw Mr. Hinton there that day also. On that day, I took a position on 41st Street at about 6:00 A. M. It was my best recollection that Mr. Hinton was there when we arrived. Mr. Hinton testified that he got down there at 7:30 A. M. I might be mistaken. It was 7:30 that I left, as I remember it. My best recollection is that I got there at 6:00 A. M. and Mr. Hinton was there when I arrived. I did not converse with him that morning when I arrived at the Roadway Transit dock. Mr. Norris accompanied Mr. Hinton. I did have a conversation with Mr. Hinton during the time I was waiting for Carbaugh's truck to arrive and leave. We were parked right together. When Carbaugh's truck left, our two cars did not follow immediately in the rear. As I recall it, I drove east a block away from the street which Mr. Carbaugh turned off. I saw the truck later on Hough Avenue and followed out Hough behind Mr. Carbaugh's truck. I can't tell you where I parked that morning, out on Miner Road, or do I know [fol. 327] where Mr. Hinton parked. I could see Mr. Hinton and his car part of the time that morning. I do not know whether he parked on Miner Road or not.

Cross-examination.

By Mr. Fischer:

I first observed alcohol in any of these trucks on April 14, 1939 in a car operated by Julius Weizer. I arrested him on May 17th. I saw him between those dates. I did not see who was with Weizer the first time I saw him with alcohol, because I never saw him with alcohol. As to who was with him in a truck, I can only say I never saw him in a truck.

The first time that I know definitely I saw Weizer in a car was on May 5th. I don't know; I don't understand

your question as to whether I wish to withdraw the answer that the first time I saw him as being in April. I knew Julius Weizer had been handling alcohol for a long time. That is common knowledge around our office in Cleveland. That was true before I started the investigation in this case.

The first time I saw Julius Weizer driving a car in connection with a case was on the date of April 5th. When I saw him driving the DL-118. I arrested him May 17th. I was instructed not to arrest him before that, by my superior officer Mr. Bruner. I did not do any investigating so far as his case is concerned in any point in the country.

LANCASTER, RAYMOND J., a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hopping:

I am an investigator of the Alcohol Tax Unit, Internal Revenue Service, and have been employed in that or similar work for the Federal Government for more than ten years. [fol. 328] I was in Court yesterday and know Mr. Hinton, the Special Investigator, who testified. He is employed in the same division of the government I am. I worked with him in Cleveland, Ohio, on April 11, 1939. I also worked with Special Investigator Moses in Cleveland, Ohio, on April 14th, April 25th, and May 5th, of 1939. I worked with Special Investigators Hinton and Moses in Cleveland, Ohio, on April 18, 24, 27, 28 and May 3rd. On these days, I also worked with the other investigators named.

On May 17, 1939, I made some investigations at 2260 Rockwell Street, Cleveland, Ohio. That is a private home, a two-family flat. I watched the premises from 7:00 P. M. to 9:25 P. M. At 9:25 P. M., I saw a 1930 Ford coupe, bearing Ohio 1939 license plates DL-118 drive slowly past the premises. It turned around and parked directly in front. The driver got out and they removed two five-gallon cans, which appeared to be full, into 2260 Rockwell Avenue. I followed him into the premises. As he came out of the kitchen door empty-handed, I asked him what he had done with the two cans.

Mr. Frederick: I object to that, to any conversation he had with this individual who has not been identified.

Q. Who was the individual?

A. Nick Giordano.

Q. The same man who is a defendant in this case?

A. Yes.

Mr. Frederick: Then, I further object and ask that the Jury be instructed to disregard it as to the defendant, Braverman, inasmuch as it was made not in his presence.

The Court: It may be received.

Mr. Frederick: Exception.

He pointed to them in the kitchen. I saw there were no Internal Revenue stamps on them. He said he did not know what was in the cans. I advised him I was a Federal officer and placed him under arrest. Upon examination, I discovered both were filled with illicit alcohol. Also in the premises were thirty-eight one-gallon jugs and pint bottles, and so forth. I took samples from the cans, which are Government's Exhibit 212.

[fol. 329] Q. And you sent it to the United States chemist for analysis?

A. Yes.

Mr. Hopping: I offer in evidence Exhibit 212.

Mr. Frederick: I wish to object to the introduction of the evidence for the reason it relates to an offense other than that charged in the indictment. That the address known as Rockwell Street does not appear in this indictment; that the evidence further relates to that which constituted an act or a portion of an act of a co-conspirator and in the absence of the defendant Braverman on trial and hence is not material and properly admissible in this case.

The Court: Objection overruled. This is a conspiracy case.

Mr. Frederick: Exception.

Mr. May: On behalf of the defendant Klein, I desire to object on the ground that this act or these acts of this co-conspirator related to a different indictment from the one which is hereby charged that this defendant Klein took part in, not material to the case, as far as he is concerned.

Mr. Fischer: The same objection and exception as to defendants Barrett and Stevens.

Mr. May: And exception.

The Court: Overruled.

Mr. Hopping: Cross examine. I offered Exhibit 212 I believe, yesterday, and Exhibit 213 was offered pending the identification of both of them.

Mr. Frederick: Yes.

Mr. Hopping: I offer Exhibit 213 also.

Mr. May: The same objection that we made to the introduction of the other exhibits.

The Court: The same ruling. It may be received.

Mr. May: An exception.

Mr. Fischer: And the same exception on behalf of Defendants Barrett and Stevens.

Mr. Frederick: And the same exception as to the defendant Braverman.

Mr. May: At this time I move that the testimony of this witness be stricken from the record and the jury instructed [fol. 330] to disregard the same inasmuch as this testimony has no bearing upon the defendants Klein and Frank, has no connection between the indictment herein charged, the act alleged as charged in that indictment and ask that the jury be instructed to disregard it.

The Court: Motion denied.

Mr. May: Exception.

Mr. Frederick: And the same motion and exception for defendant Braverman.

Mr. Fischer: And the same motion and exception for the defendants Stevens and Barrett.

The Court: It may be received.

Cross-examination.

By Mr. May:

I am connected with the Cleveland office. I was not present when a statement was taken from the defendant Klein.

NORRIS, CECIL, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ray:

I am a Special Investigator of the Alcohol Tax Unit and have been so employed over five years. For the past year I have been in Cleveland, Ohio.

I have heard the testimony in this case and worked with the other investigators who have testified.

On July 6th, I made an independent investigation. On that day I had the premises at 7306 Carnegie Avenue, Cleveland, under observation and saw Julius Weizer drive a 1935 Plymouth coupe with 1939 Ohio license MY-623 into the premises at 10:05 P. M. He drove up to the back door as he had previously done, remained about fifteen minutes working around the rear of the car. He then drove away on East 71st Street.

[fol. 331] On April 13, 1939, I was with Special Investigator Hinton.

Q. What took place on that particular day, Mr. Norris?

A. On that day I was with Special Investigator Hinton when we observed Julius Weizer driving a 1934 Ford coupe bearing 1939 Ohio license KY-589, in to the Miner Road premises and we followed him back into Cleveland and when he jumped out of the car and ran after hitting the curb, after we chased him, I chased him on foot. I chased him on foot to the backyard there—through 126th and Buckingham to the rear of the house on 130th Street where I caught him. And I identified myself and placed him under arrest and started to walk back towards where he had left his car and at the corner of 130th and Shaker, he struck me under the chin and escaped; I wasn't able to reapprehend him.

Q. He struck you on the chin, you say, and he escaped you?

A. That is right.

Mr. Frederick: I wish at this time to move that that portion of the testimony be stricken and the jury instructed to disregard the act of the defendant in the absence of these defendants upon trial, being immaterial to the indictment here charged.

The Court: Objection overruled.

Mr. Frederick: Exception.

Mr. May: At this time, if the Court please, I would like to move this Court to instruct the jury to disregard the testimony of this defendant, for this reason—

The Court: Of who?

Mr. May: Of this witness, from the record, for this reason: The act that he has testified to was charged as of 1939. From all the testimony previously given, it appears

that this conspiracy had terminated, as far as the defendant's Klein and Frank are concerned, in 1936 and if that be true then this testimony given is not material, is not relevant to the issues herein charged. Further, that the act which this witness has testified to as of other co-conspirators [fol. 332] has no bearing on the indictment for which we are now trying the defendants and Klein and Frank.

The Court: What do you say to that?

Mr. Hopping: The place at which this ~~last~~ incident occurred is specifically named in the indictment. The alcohol he was shown to be transporting was shown to have come from the place to which it was delivered by John Carbaugh in the boxes which were shipped out of Chicago. This is a continuous operation from 1935. The shipping that continued without break and without change in character, right straight through to the time of the seizure in June, 1939.

The Court: Objection overruled.

Mr. May: I call the Court's attention to this fact, that there has been—

The Court: I do not care to hear any more. The difficulty is you have got a long drawn out affair here—a big conspiracy, if there is one, with many involved. And the acts of various alleged members, if there is a conspiracy, bind upon all of them.

Mr. May: Except if they withdrew.

The Court: Well, if they withdrew—I will charge the jury as to that.

Mr. May: That is what the testimony has been.

The Court: All right. The objection is still overruled.

Mr. May: Exception, on the record.

Mr. Frederick: I would like to make the same objection for defendant Braverman.

Mr. Fischer: The same objection and exception for the defendants Stevens and Barrett.

CHAMBERS, THOMAS, a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hopping:

I live in Chicago. In 1935 I was truck dispatcher for the Roadway Transit Company, located at 618 West Persh-

ing Road. The place I worked was what has here been [fol. 333] described as the dock at 39th and Lowe. It is a half block from Wallace. The Roadway Transit Company moved from Wallace Street to 39th and Lowe in 1935. I worked there until February of 1940, except for a few months in 1936 and 1937.

I identify Government's Exhibit- 7 to 13 as records of the Roadway Transit Company. I had charge of loading and preparing them for shipment from Chicago and receiving them. They were received by me on the dock of the Roadway Transit at 618 Pershing Road. The freight that came in during the day was put on the dock. In the evening around 5:00 o'clock, the dock men came in and we started to load them in the trucks for the different points.

Exhibits 7 to 13, inclusive, are partly made in Chicago at the time of receiving the shipment. When freight is received at the dock, we take the bill of lading into the office and have the billing clerk make it up. Our own bill is prepared for the shipment. When I say our own bill, I mean it is prepared from the bill of lading. Some of the shippers have their own bills and others use ours. Exhibits 7 to 13 describe the shipments we received.

I know that Rug Life always delivered their merchandise to our dock. The description of the shipments is like that on the exhibits. On this exhibit it is a shipment of six boxes. The boxes were rug cleaning fluid. Exhibit 73 is the same type of box whose shipments came in consigned from the Rug Life, Inc., Chicago, to Star Carpet Cleaners, Perfect Carpet Cleaners and Carbaugh & Sons in Cleveland, Ohio. They weren't in "care of Carbaugh."

I was not working for the Roadway when the shipments described in Exhibits 7 to 13 were received during the months of April through July, 1936, because I was off during June and part of July. The rest of the time I was working there as shipping clerk receiving the shipments. I can identify Exhibits 59 to 62, inclusive, as records of the Roadway Transit Company. They cover a period that I was not there. Exhibit 62, which is dated January 9, 1937, was a period that I was not there employed as do Exhibits 60 and 61. Exhibit 59, dated May 1, 1937, I am not certain of. I believe I was there, because it was in the Spring of the year I went back to work there. [fol. 334] In May, 1937, when I was working there, the shipments were handled by me in the same manner as they were.

in 1936 when I handled those described in Exhibits 7 to 13.

I worked at the Roadway Transit dock in Chicago in 1938. I identify Government's Exhibits 176 to 186, inclusive, as records of the Roadway Transit Company. I received the shipments described in those exhibits. They were handled in the same manner as those I have just testified to on the other exhibits. As to Exhibits 14 to 57, inclusive, I identify them as records of the Roadway Transit Company, but I did not receive all of them, because I was not there during all this period. I was absent the first few months of 1937. This series of records covers a period from November 1936 to May 12, 1937. As near as I can recollect, I was off the job about five months in 1937, beginning right after New Year's day. To the best of my recollection, I resumed work in the first of May, 1937.

Shipments made before January, 1937 and after May of 1937 were received by me and handled in the same manner as the others. I never made out a bill of lading for Rug Life. All these were shipments from Rug Life. In January, 1936, I received some shipments consigned from Golden Extracts Company. I identify Exhibit 191, consisting of sixty papers representing 58 different shipments, as being records of the Roadway Transit Company originating at their dock in Chicago. I was there employed during the period covered by these shipments. That is, from January 14, 1938 through July 13, 1939. They are records of shipments sent from Chicago to Cleveland, Ohio. Some of them were consigned to "Goddard Products and Care of John Carbaugh and Sons." They are all shipments received from Rug Life, Incorporated.

Mr. Hopping: I will offer in evidence Exhibit 191 and re-offer Exhibits 7 to 13 inclusive; 14 to 57 inclusive; 59 to 62 inclusive; 176 to 186 inclusive,—at this time. All of these exhibits, with the exception of 191, were received according to my notes, they being photostats of the originals which are now in court. Exhibit 191 is a bundle of original exhibits of the Roadway Transit Company.

[fol. 335] The Court: You say that the photostats have been offered?

Mr. Hopping: Yes, Your Honor, and received.

The Court: These are the originals now, in accordance with your offer to produce the originals.

Mr. Hopping: Yes.

Mr. Fischer: My recollection of this, if the Court please, is that this is the one that you wanted the summary of, that we were agreeing on a summarization as to what they were showing. Is that correct?

The Court: Which one? 191?

Mr. Fischer: I think we have a summary on that.

Mr. Hopping: I have a summary; but the exhibits themselves should be in evidence. We are offering them. As far as reading them is concerned, I think we can agree on the summary, as to what that shows.

Mr. May: My objection to them is already on the record.

The Court: They may be received. Exhibit 191—

Mr. May: Yes, Your Honor.

The Court: May be received and the summary is not prepared.

Mr. Hopping: Yes, I have it here.

The Court: You gentlemen have agreed upon that, have you?

Mr. Fischer: We haven't yet. I presume it is all right.

The Court: Well, you will have an opportunity to check it.

Mr. Hopping: And the Exhibits 7 to 57, 176 to 186, inclusive, and 59 to 62 inclusive have previously been received, according to my notes.

Mr. Frederick: Yes, that is right.

The Court: All three of those?

Mr. Hopping: Yes.

The Court: And these are the original papers?

Mr. Hopping: The exhibits that have been received are the photostats and the originals in each case of the photostats are present in court and have been compared by counsel, I believe.

[fol. 336] The Court: They are included in the three sets right here, is that right?

Mr. Hopping: Yes.

The Court: 7 to 57, inclusive; 176 to 186, inclusive; and 59 to 62, inclusive.

Mr. Hopping: That is correct.

Mr. Fischer: May the defendants Stevens and Barrett note an objection for the record as to the introduction of Exhibit 191 at this time, inasmuch as the receipts have not been identified by the particular person that prepared them and the writings on here have not been identified by any particular person?

Mr. Hopping: By any particular person?

The Court: I don't understand what you mean. Here is a man testifies those are the records of this Roadway Transit Company.

Mr. Fischer: I don't understand that he testified that he prepared these particular documents; but that he was merely working there.

The Court: I don't understand he did, either, but he says they are the records and I am assuming that he knows. They may be received.

Mr. Fischer: Exception.

Mr. Frederick: Exception.

In the early part of January, 1936, in connection with shipments I received consigned from the Golden Extracts, Chicago, I saw a man that bore a resemblance to Mr. Braverman come to our dock as near as I can recollect. I made out bills of lading for those shipments on two occasions. I remember after the shipments were received of looking for the records of them on the first day I made them out, because I remember that the first bill of lading that I made out, I forgot to put a carbon copy in that shipment. When I looked for the records of the shipments, I could not find them. When I made out the first bill of lading, I didn't put in a carbon copy. I wrote on the first sheet, but there was no carbon in between. That was in the early part of January, 1936. I gave the first sheet of the bill of lading to the billing clerk.

It was at that time that I saw the person I referred to in the court room. I made out a bill of lading on another [fol. 337] occasion during the same months. I didn't receive any other shipments labeled in a similar manner, except once after that. During the time these shipments were coming into our dock from Rug Life, Inc. our trucks left Chicago for Detroit practically all day long. We never received any calls or visits from anybody on the shipments going to Detroit, that I recollect. I do recall calls on the shipments going to Cleveland. That is the series of shipments represented by Exhibit 191. Somebody, the Rug Life evidently, would call. This occurred in advance practically every time a shipment was brought in to be sent to Cleveland, Ohio. I got to know the voice of one who called me fairly well, so that I would recognize it on the telephone. In June of 1939, I recall putting in a call and talked to the same voice. At that time, I called the warehouse foreman

at the Empire Storage—50th and Lake Park, Chicago, Illinois. I asked to talk to the warehouse foreman. I do not recall whether Mr. King had me ask for the warehouse foreman or for Mr. Stevens, but one of the two.

I talked to someone there that day, but he did not give me his name. I asked for either Mr. Stevens or the warehouse foreman, I don't remember. I asked him the price of a room for storage. He wanted my name and address. I believe that the voice of the Mr. Stevens I talked to then was the voice that I had talked with before on the telephone. I mean that as close as I can recollect that it was the voice that asked me to save room for a shipment on a truck going to Cleveland, Ohio.

In June, 1939, the man who is pictured on Government's Exhibit 192 came to the Roadway Transit dock and talked to me about the Rug Life shipments. I do not know his name.

Mr. Hopping: I offer in evidence Government's Exhibit 192.

Mr. May: I will object to the introduction of this Exhibit as against the defendants Klein and Frank, for the reason that it has no connection between the defendants Klein and Frank and the charges contained in the indictment. He has testified that he saw this man as of 1939, which testimony is out of the scope of the indictment, inasmuch [fol. 338] as there has been testimony that as far as any of these defendants that I represent here is concerned, had no part in the conspiracy after the Spring of 1936, if they ever did have a part in the conspiracy, and that there is no connection shown between this person whose talk is offered into evidence and these two defendants. It is too vague, indefinite, and prejudicial as to these two defendants.

The Court: Let me see it.

Mr. Hopping: That is the same Exhibit which has been identified by Mr. Carbaugh, and Mr. Ware, I am sure at this time, as being one of the co-conspirators and co-defendants named in this case, who is not on trial—Bill Bagdonas.

Mr. May: In which case, may we have the record show?

Mr. Hopping: In case 25571 as defendants, and in the other case number as co-conspirator.

The Court: What is his name, Joe or William?

Mr. Hopping: William Bagdonas.

The Court: It may be received.

Mr. May: Exception, if the Court please.

Mr. Frederick: I would like to note the same objection and exception, and for the further reason it has not been sufficiently introduced or produced, testimony to show this to be true reproduction of that party whose name is mentioned in that indictment.

The Court: That is true enough for the man who recognized him. The evidence is for the Jury.

Mr. Frederick: The likeness, however, is not shown, that it might have been taken of another person.

The Court: Go ahead. This man says it is a picture of the man he knows, so go ahead.

Mr. Fischer: And an exception as to defendants Stevens and Barrett.

In June, 1939, when this man whose picture I have identified as Exhibit 192 came to the Roadway Transit dock, he told me that he represented Rug Life, Inc. and wanted to know if the Government had been around in regard to investigation of the sales tax. He said they were having trouble with the Sales Tax Department and at that time [fol. 339] there was a little lapse in the shipments. I asked if they were going out of business, or what steps had been taken and if there was anything radically wrong about having trouble with the Sales Tax. He told me, "No;" that it would be straightened out in a few days and they would resume shipments. Additional shipments did come from the Rug Life after that, but not very many.

The visit I spoke about was from the man whose picture is Exhibit 192, and whose name is Bill Bagdonas. I believe this was prior to the time I called the Empire Warehouse and talked to Mr. Stevens. It was just about the same time.

I cannot identify Exhibit 189 as a record of Roadway Transit and shipment with which I had anything to do. It occurred while I was not there employed. It is a record of the company. I so identify it because it is stamped and signed by Sam Martino, one of the Roadway employees. It is a record which originated at the Chicago office.

I likewise recognize Exhibit 190 as a record of the Roadway Transit Company, originating at Chicago. With reference to the shipments which went to Cleveland, as represented by Exhibit 191, I recall that all shipments we received that would go to Cleveland were delivered at our dock by the Empire Warehouse trucks. I became acquainted with practically all of the Empire Warehouse drivers. There is nothing on Exhibit 191 which shows how the shipments were received. The Roadway Transit maintains, and did during the time covered by Exhibit 191, a pick up service. This service was included in the regular freight charge. The Roadway Transit never made a pick up of any of the shipments represented in Exhibit 191, so long as I was dispatcher. During the time I was there, all of the shipments were delivered by Empire trucks. I do not know what was done when I was not there.

During the time I have been here, I have recognized in the court room Mr. Anderson, as an Empire Warehouse driver. I have not seen any of the other drivers. I never had occasion to know the signature of any of the drivers of the Empire Warehouse Company.

[fol. 340] With respect to the signatures described in Exhibits 14 to 57, inclusive, which are shipments from November 1936 to May 1937, they were brought to the Roadway Transit dock by Charles Pacente, who testified here, as were the shipments represented by Exhibits 176 to 186, inclusive, covering January 1, 1938 to October 21, 1938, and consigned to Star Products, care of J. E. Johnson, 6601—12th Street, Detroit. So far as I can recollect, Pacente also delivered the shipment on Exhibit 59 dated May 1, 1937. Those appearing on Exhibits 7 to 13, which were all shipments that came from Rug Life and going to Detroit and to the Perfect Carpet Cleaners at Detroit or Wyandötte, were also delivered by Pacente. I cannot say as to all of the shipments from April to July 1936, because I was not on the job during some of the Spring or Summer. I was absent a few months in the Spring of 1936. I was there in April and part of May 1936, but not in June or July.

I received shipments from other shippers than the Rug Life and the Golden Extracts Company. I received and dispatched the biggest part of all these shipments that came during the time I was employed. In response to the question as to the method by which most of the shipments

are brought to the Roadway dock, I can only say some companies have cartage companies and we make some pick ups. When some cartage companies secure business and bring it to us, we pay them for bringing it in. Others just send it in of their own accord. There was a regular method of applying for or claiming rebates for shipments delivered by other than Roadway to our company. I did not handle it, but just okayed the bill as receiving it, and would turn it over to the cashier. I had nothing to do with the claim for rebates. I do not remember anybody who delivered his own shipment or by his own cartage company claim a refund. They would collect it right there, if they wanted it.

To my knowledge, Charles Pacente never collected a refund for delivering a Rug Life Shipment, nor to my knowledge did the Empire Warehouse.

[fol. 341]. Cross-examination.

By Mr. Frederick:

I am thirty-four, married, and live in Chicago at the present time. I was employed by the Roadway Transit from 1930 to 1940, outside of two years, 1933 and 1934 when I was employed by American Carloading. There was a few different times I was laid off at Roadway Transit. I worked steadily at the Roadway Transit from 1930 to 1933. My first job was city pick up and delivery. I did this just a few months and was given the job as dispatcher.

I left in 1933, because of a dispute with the Roadway Transit people. I then went to work for the American Carloading Company as dispatcher and warehouse foreman. I left that job to return to the Roadway Transit Company, because they came to me and offered more money and wanted me to go back to work for them. I then worked for them continuously until 1940, except for a few months in 1936 and 1937.

I am not now employed by them, but work at the present time in the stock assembly at the Ford Motor plant at Chicago, Illinois.

I have not been arrested nor convicted of any crime.

As dispatcher at the Roadway Transit, my duties were to care for the pick-ups and deliveries and prepare the trucks to be loaded on the highway, as well as receiving freight in the day time.

The Roadway Transit do not have a warehouse. It is just a garage with a platform built on it. Their place at 39th and Lowe is 150 by 125 feet. That is the only dock they have in Chicago for shipments. We could handle for loading or unloading as many as seventeen trucks at one time. There has frequently been that many there at one time. I had an office built on the platform. By platform, I mean an area where the freight could be stored after it was unloaded from a truck and before being loaded onto an outgoing truck. Most of my time, from 1:00 to 4:30 P. M. was in the office. During the day the company does not have enough business to have [fol. 342] checkers or persons to assist in loading and unloading of trucks. I generally took care of it. Once in a while we have another dock man, who would always be bringing the bills in to me to sign. Usually the bills would be presented to me by the man on the truck. The dockman would unload the shipment from the truck into the warehouse. If he wasn't there, I would truck it in. We did not have a dockman regularly employed. This depended upon the rush of business.

All of the shipments were not allowed to stand in the warehouse between the time of their arrival there and the time the truck upon which they were to go left. Sometimes there were empty trailers parked at the dock. Merchandise that came in in the day time would be run onto these trailers. Sometimes the dock man and sometimes I ran the load from the truck onto the empty trailer.

We were not so busy in 1935, except in the Fall of that year. The busy season in our business is from the middle of August until Christmas. I could not say how many people I would see during an ordinary day that were making shipments. Some days there wouldn't be anybody delivering any freight to the dock. On other days we would have a whole lot delivered. There would be as high as fifty different people came during the day to deliver merchandise at the dock. Many days this was true.

Each of them would bring their bill of lading to me. If I had a man working on the dock at the time, I would tell him what to do with the freight and have the bill of lading stamped and made up onto our own bill. I would not do this, but had the billing clerk do it. He was in the same office I was. He would make up the bill, take the bill of lading and file it with one copy of our bill

and they were sent to the Detroit office every night. I had nothing to do with the bills outside of some times when I would put them in the mail bag. After that, they were all laid together and given to one of our drivers to take to Detroit.

I helped check loading from the docks onto our outgoing trucks until 7:00 o'clock at night or 7:30, depending on [fol. 343] how busy we were. There was a night man, who came to work after me. On busy days, we had others who checked during the day. January is the slowest season of the year. This was true in January of 1936. In January of 1940, we had help on our platform. We had checkers.

In 1940, there was a complete change. The unions made us put on these men. I had nothing to do in 1940, except dispatching and supervising the loading of trucks. This change took place in the Fall of 1939. In January of 1939, we did not have any extra help, but were forced to keep one man there at all times whether there was anything for him to do or not. This was Emil Larmashino. As far as I know he is still with the company. He came to work for the company in the Spring of 1936. No, I believe it was in the Summer of 1936. It was right after school, because a friend of his came over and I gave him a job working on the dock in the evenings to make some extra money. I gave both he and his friend a job. I do not remember the friend's name. He was Polish. I just called him Steve. These men did not work steady, but just in the evenings for a few hours, until we got the trucks ready for the highway.

In January of 1936, I was working the late shift from 12:00 noon until we got through loading. There was another man there in the morning. His name was Daniel Larmashino, a stepfather of Emil, of whom I spoke. I came in at noon. He generally went upstairs to the office, then to lunch, and would return about 3:00 or 3:30, when he would help me answer the telephone. He was the only one, besides myself, on the warehouse platform during the whole month of January, 1936. No, I wouldn't say he was the only one, because there were days that we probably had some dock man working, though I don't know which days they were.

During the time I have been with the Roadway Transit, we have had a great many shipments from Chicago to Detroit. At that time eighty per cent of our business was

to Detroit. There were shipments to many different people in Detroit and by many different companies.

[fol. 344] I was first asked if I recollected anything relative to shipments under the name of Golden Extracts Company in 1939 by Mr. King. I recalled the name after he had asked me about it. There were three shipments in the name of Golden Extracts Company that I know of. I know that by my recollection. I have not checked my records to refresh my memory. I have refreshed by memory of the shipments. After it was brought to my *my* attention, I refreshed my memory to three shipments. There were three shipments in January 1936 under the name Golden Extracts. I remember one, because I had a kidding argument with the billing clerk about not putting the carbon paper in what I made the bill of lading on. Another instance, I remember because they had cans inside of a frame structure which seemed odd to me that anybody would be that careless. The other occasion is that evidently there was a shipment came in there while I was out to lunch and when I went to load at night I saw the cans in the wooden structure. Those are the only three occasions I remember.

I recalled these when Mr. King asked me about them after I had thought about it. I told him just as I have described them here. It is a very unusual occurrence to ship cans in the frame. The oil companies used to ship their oils sometimes in cans like that and they discontinued it on account of breakage. In 1936, some cans were in a frame structure like that. A few of the oil companies were shipping cans in frame structures like them. We had two or three shipments like that from oil companies that I recollect—the Socony Vacuum Oil Company—they had drums of oil in the load and some of these five-gallon crates on top of loads. It was in 1936 or 1937 that we had two or three crates from the Socony Vacuum Oil Company in Detroit. It was in January or February of 1936. Prior to January of 1936, all the companies shipped cans in crates. During 1935, we hadn't received very many shipments of cans in crates. There was quite a bit of talk about such shipments and the way people were careless to put cans in crates. They discontinued it after many claims they had of breakage.

[fol. 345] Besides the Socony Vacuum Oil Company shipping cans in that fashion, the Standard Oil Company did also. I didn't see many of the Standard Oil shipments,

because their trucks generally picked them up in Whiting, Indiana, on the way to Detroit. I saw a shipment of that type in the Fall of 1935. It was practically every month of 1935. It was unusual in January, 1936, because at that time it was starting to be discontinued by everybody.

The first of the shipments I mentioned as being from the Golden Extracts occurred right after New Year's. It was brought there in an automobile, I believe. At this time I wouldn't say that it was an automobile. It was brought in on the dock off of 39th Street. I came out of the office and the cans were on the dock. I helped set them on the side of the dock where the Detroit freight went. I recall that day quite clearly. There were eight or ten shipments for Detroit delivered to the dock that day. They were delivered by trucks. The Gateway City Transfer brought freight into our dock.

Q. What other trucks?

The Court: Mr. Frederick, I do not want to restrict your cross-examination but these questions ordinarily are competent for the purpose of testing the recollection of a witness but I am not going to permit you at every time this man talks about several shipments to start out to take each one of those shipments individually and go all over them when they do not refer to this case.

Mr. Frederick: The purpose I intended to—

The Court: I understand the purpose. It is to test his recollection.

Mr. Frederick: That is correct.

The man who brought the first shipment with the name "Golden Extract" on it bears a resemblance to Mr. Braverman. It was in the afternoon. When I say "bears a resemblance," I mean he looks like Mr. Braverman. He had on a big brown overcoat and a dark hat as far as I can remember. He did not wear glasses. So far as I could see, he was not accompanied by any one else.

I do not know whether these crates were brought in a car or truck. I saw the crates of cans on the dock when [fol. 346] I came out. As to what occasioned me to come out, I just come in and out of the office all day long. No one came into the office after me on this particular occasion. I asked the man for his bill of lading. He said he did not have any. I made one out. He asked about the freight

charge. That is all the conversation I remember. There was nothing unusual in the conversation. The only unusual thing was as I said about the bill of lading. It is unusual for us to make out bills of lading for people. I wrote the bill of lading out. The billing clerk was there that day. After I made out the bill of lading, I brought it over on the billing clerk's desk to have him make it up and I asked him to make another so we could give the gentleman a carbon copy. I do not know if he gave him a carbon copy. This transaction took five or ten minutes.

Q. And you wouldn't say that a similar type of transaction has not occurred to you many times in the years you have been with Roadway Transit Company, would you?

A. In regard to what?

Q. A man delivering a package not making out any bill of lading and you make out a bill of lading and give him a copy and going on about your business?

A. No, because nine times out of ten when I would come in I would ask him if he had the bill; if they didn't have no bill, I would make the bill.

Q. That has happened many times in your handling of it?

A. No, not many times.

Q. It happens more than once a year?

A. Yes.

Q. How frequently?

A. Maybe a few times a week.

After making out the bill of lading, I jumped off the dock and asked the man if he got his bill of lading. He didn't answer. I took it for granted he didn't hear me and walked over to the other side of the platform and to the other part of the garage. That was away from where he was. This entire transaction took about ten minutes or so. I saw [fol. 347] this man the second time he came there. The third time that that type of merchandise was there I did not see him. The second occasion was a week or so after the first. It was in the afternoon on a slow day.

As to the number of shipments we had there on this second day, I can only say we never have over eight or ten a day. I recall we had that many every day. I do not recall the exact number we had on the day we are talking about. I estimate it to be about eight or ten. I did not make out any bills of lading for anyone else on that day.

Q. I mean, the second occasion we are talking about.

What occurred on the second occasion?

A. Well, I made out the bill and I told the gentleman, I says, "You know, we ain't supposed to make these up. You should make them up yourself." And he said he didn't know how, and I said, "All you do is put on who it is from and who it is to go to and sign your name on the bottom."

Q. Was there any other conversation?

A. And the classification of the type of merchandise.

Q. Was there any other conversation?

A. That is all.

It was only a few minutes that day, because I was talking to the garage mechanic on the platform. He was an employee of Roadway Transit. When I say a few minutes, I mean only two or three minutes. There were no other people on the dock, at that time, except the mechanic and myself. I made out the bill of lading on that day in the same fashion as the first occasion. There was nothing said at the time I delivered the copy of the bill of lading. I stamped his copy and gave it to him as I took our copy. I had no conversation other than that which I have related. That was about the second week in January in 1936. I never saw this man after that.

The first time I said that Mr. Braverman looks like this man was when I first came here in this case. I never saw him outside of those two times. I was shown some pictures [fol. 348] in 1939 by Mr. King. I was shown some pictures of Mr. Braverman and Mr. King asked me if I ever saw him. I told him that was the man who bore a resemblance to the man who came to our dock. At the present time I would merely say he bears a resemblance to that man. I would not say positively that it is the man, outside of my recollection.

Cross examination.

By Mr. Cavanagh:

I believe the first time the Empire Warehouse Company's truck delivered any merchandise to our dock was in the Fall of 1937. It is correct that I testified I do not know the driver person of the first three shipments in which the shipper was the Golden Extracts Company. I have no independent recollection as to what means of transportation carried the first three shipments to our dock. Mr. Pacente

started carrying merchandise over there in April, 1936. I have refreshed my memory as to that. I first saw Pacente there in April, 1936. I could not say how long a period of time Mr. Pacente hauled merchandise over there, because I left the employment of the Roadway Transit for a few months and I do not know how many times he was there then, but when I came back I never saw him again.

I did not refresh my recollection from any exhibit, but it is my own recollection that it was the Fall of 1937, when I first noticed Empire Warehouse equipment bringing merchandise there. I got to know four or five of the Empire drivers by their names. There may have been eight or nine different drivers.

I identified Mr. Anderson as one of the Andersons in court this morning. He drove a small one-ton open stake body truck. The others came in every kind of a truck they had, trailer, van trailer, different size moving vans, and I believe there was a small open top truck, stake trucks. It was in the Spring of 1939 that I made the call to the Empire Warehouse at the request of Mr. Firmer King. I called from the Roadway Transit. Mr. King gave me the number. [fol. 349] I do not remember it. I put the call through our switchboard. I did not dial the number; there is no dial number. The party who answered was the party I asked for, either the warehouse foreman or Mr. Stevens, I don't remember exactly. The first answer was the girl, a telephone operator. I don't remember who I asked her for, either the warehouse foreman or Mr. Stevens. I only recollect talking with one man on that occasion. I do not know whether I talked to Mr. Carroll or not. I never talked with Mr. Carroll over the telephone to my knowledge. Nor did I ever talk to Mr. Dracka, one of the defendants in this case, over the telephone that I know of. To my knowledge I never heard the voice of Mr. Carroll or Mr. Dracka over the phone. The voice I talked to was kind of quick. That is all that marked it as outstanding or different from any other voice I talked to.

I haven't ever talked to any other person over the phone with quite that type of voice. The party at the other end of the phone did not tell me that he was Mr. Stevens. I took it for granted that the party I asked for was the one I was given. I asked the price of a room. The party at the other end of the phone wanted to know what type room I wanted, my name and address. I hung up before they quoted the

price. I never either before or after that called the Empire Warehouse.

To my knowledge, I never talked to Mr. Fred Stevens over the telephone. I did not at any time see any of the Empire Warehouse trucks in connection with the shipments on which the consignor was the Golden Extract Company.

The busy part of day at the Roadway Transit is from 5:00 o'clock P. M. on. There isn't much business or operation before that. At that time the Roadway Transit maintained twelve pick up trucks in Chicago. These twelve trucks loaded up in the morning, made deliveries, and then they called in for the pick ups.

Frequently it was impossible to get a pick up wagon for a particular customer on a given day. On occasion, it was a few times a week that our own equipment was unable to make all of the calls the dispatcher had given him. Some [fol. 350] weeks they would not run into any trouble at all. This did occur, however, quite frequently.

I have heard of a cartage company making claim for rebate. This occurred every day. It is the cartage company instead of the consignor that makes the claim. There is an arrangement with our company to reimburse the cartage company who make the deliveries. The Roadway Transportation Company is not under contract with any of the Chicago cartage companies. Each individual delivery would form the basis of each claim. The rebate allowed customers delivering merchandise to our docks was five to ten cents a hundred, according to the volume of business they brought in.

To my knowledge, there was never any inquiry made by any of the drivers for the Empire Warehouse Company concerning this rebate. A claim could be filed elsewhere. The Empire Warehouse Company never delivered any crated cans that we discussed this morning. The freight that was delivered by the Empire Warehouse were boxes like Exhibit 73 with the head tightened down, and two pieces of band iron around it. The warehouse company never delivered anything else on this particular account to my knowledge. I do remember them delivering other merchandise to our dock on one occasion, though it may have been more than once. That was a shipment of chemicals going to the Ford Motor Plant, Detroit. I do not know who the consignor of the shipment was. It was from the warehouse at

Fourth and Calumet. That particular shipment was a small cyanide drum in a bag.

There was nothing unusual about the cases delivered to our dock by the Empire Warehouse Company. Nor was there anything that aroused my suspicion as to their contents. I recall one occasion that we had some leakers. I dropped a box while loading it on a Cleveland truck. This was about February or March of 1939. It occurred as I trucked it into the truck. I took the box, turned it around, and marked the sign on the back of the box to keep that side up as it was leaking. There was nothing particularly suspicious about the odor that came from that box. As I remember, there was no odor to it. Very little came out. I turned it over right away and went about my work. I did not know at that time it was alcohol. I only gathered it was alcohol from what I heard in court and what Mr. King told me. First time I learned that these cases contained alcohol was, I believe, the early part of 1939.

I handled the shipments in which Rug Life was the consignee from April 1936 to June 1939, except for the few months that I was off. I personally handled them a large percentage of the time. There was never anything that created any suspicion in my mind as to the contents. I did not open the box when I discovered the leaker I previously mentioned. I never opened any of the shipments that were consigned to our company, because it is in violation of the Interstate Commerce Commission. I was not present when the rate was established for these shipments, though I heard some conversation about it between Mr. Elliott, Mr. Clark, and Mr. DeDunn. They were trying to fix what commodity it was—there was some discrepancy. I do not remember what it was. I never paid much attention. I believe a change was made in the rate after that conversation. I think it was increased.

The first shipments that were made were marked caramel extract. There were other shipments a few months after that. They were consigned to Detroit, Perfect Carpet Cleaners and Star Products, Detroit and Wyandotte. They were described on the bills of lading as rug cleaning fluid. I never made out any bills of lading for the shipments from the Rug Life, Inc. The men that brought the merchandise told me what to put in the bills of lading that I made out for the Golden Extract Company. I merely wrote down what I was told, and there was no question asked.

The man who came to me in June of 1939 and told me about some dispute with the Sales Tax was not Mr. Barrett or Mr. Stevens. I never saw Mr. Barrett or Mr. Stevens before coming to this courtroom for this trial.

[fol. 352] After the Golden Extract shipments, the only consignor was Rug Life, Inc. I do not remember that there was ever prepaid charges made on any of these shipments, they all were shipped collect. I make out bills of lading for shipments sometimes once a week, twice a week, or three times a week. It is not a part of our service to make out bills of lading. We make them out the first or second time to show how it is done and give them their bill of lading and let them make it out themselves, so that if there is any violation in the merchandise described, it would be their own responsibility. Whenever I do make a bill of lading, I take the word of the shipper as to the contents. I did not make out the original bill of lading which is Government's Exhibit 13.

In checking the deliveries to our dock, we merely looked at the number of pieces. This one contained six boxes. It does not indicate the nature of the shipment. There was a rate of sixty-six cents per hundred pounds used. Government's Exhibit 12 shows six boxes of rugs. I do not know whether or not the shipment contained rugs. If it had contained rugs, it would have carried a different classification and a different rate. The rate clerk, when he has the bills of lading, rates it according to the merchandise. I do not know who made out the original bills of lading from which this information was received.

Government's Exhibit 11 shows a shipment of six boxes of rugs. I do not know what that particular shipment was. The rate clerk took the information from the rate books set up by the Interstate Commerce Commission. There was an original bill of lading. I do not know who made it out, because the billing clerk did not put his initials on this bill.

Government's Exhibit 31 says, "Seven boxes of Rug Cleaning fluid cans." I do not know whether that shipment was enclosed in boxes or crated, because at this time I was not employed by Roadway. The first time I knew the contents of these shipments was after I talked to Mr. King in the early part of 1939. I continued to handle the shipments after that. I do not know the rate on rug cleaning fluid.

[fol. 353] Redirect examination.

By Mr. Hopping:

So far as I know, the rate fixed by the Interstate Commerce Commission on rug cleaning fluid has been the same since 1935. In early 1936, there were numerous changes in the supervision and regulation of motor carriers. This was in connection with the adoption of the Motor Carriers Act.

Exhibit 13, which describes a shipment of six boxes without any merchandise described, shows, "Weight, 1500 pounds," and rate "76." This is the rate fixed by the Interstate Commerce Commission schedule. The billing clerks often left a lot of things off of the bills of lading. They always acknowledged the number of pieces and weighed it correctly though.

Exhibit 12 describes a certain number of boxes of rugs and the rate is 76. The same is true of Exhibit 11. Exhibit 10 is described as rug cleaner, and the rate is 38. Exhibit 9 is described as rug cleaning fluid, and the rate is 38. The same is true of Exhibits 7 and 8.

In looking at the exhibits I would say that the shipper had designated the contents of the shipments on Exhibits 13, 12, and 11 as rugs, since 76 is the rate applied to rugs. The other four designated as rug cleaning fluid were given the rate for rug cleaning fluid. If the shipper had indicated that the shipment had contained alcohol, it would have been billed and shipped in the same way. The responsibility for accuracy stating the contents of a shipment is on the shipper.

In January 1936, I learned from our General Manager that we could not handle alcohol, because you have to have a special permit to transport liquor from one state to another. I did testify that while it was not part of my regular duty to make out bills of lading, I did so upon the shipper's request and then gave a pad of bills of lading for them to make out. I gave a pad to the man who brought the caramel extract on the second occasion. He took it away with him.

In my talk with the warehouse man at the Lake Park Warehouse of the Empire Company about the price of room, he was quoting a room in his warehouse.

[fol. 354] I saw Clarence Dracka, who has testified in this case, at the Roadway Transit dock in Chicago, once. I be-

lieve it was in April or May of 1936. He came in with Pacente, and I gave him a pad of bills of lading. I have no other recollection as to seeing Clarence Dracka.

Cross examination.

By Mr. May:

Mr. King, an agent of the Alcohol Tax Unit, came to see me the early part of 1939. Under his instructions, I continued to make shipments as I had done before. I made many shipments after I talked with King. I would say about ten or twenty. King had me call the warehouse and ask the rate for a room. I did not want to rent a room, but did it at his instructions. He told me to keep on as we had done before, and not to let anybody know that I had been wised up as to what was happening.

Cross-examination.

By Mr. Frederick:

I made out the bill of lading for the second shipment of caramel extract that was made. I made out the first bill of lading. I do not know who made out the second or third one, because I was not present at the time.

Mr. Frederick: And I understand we do not have the records of those bills of lading of the Caramel Extract.

Mr. Hopping: I am not sure I have your question.

Mr. Frederick: The copies of the bills of lading relating to the Caramel Extract shipment.

Mr. Hopping: Those for the Roadway were what this witness testified, he looked for, and didn't find in the records of the Roadway Company.

The Court: Bill of lading?

Mr. Hopping: Yes.

The Court: How about the freight bills, or whatever you call them?

Mr. Hopping: I believe I asked as to both. Is that true of the freight bills also?

[fol. 355] The Witness: I never looked for it. Mr. Elliott looked for them.

Q. So far as you know, they were not found?

A. Not to my knowledge.

Mr. Frederick: That is all.

Mr. Cavanagh: Just one question.

Recross-examination.

By Mr. Cavanagh:

At the time Mr. Dracka came over to the Roadway, the only conversation I had with him was that he said, "How about some bills of lading, kid?" I said "Okay" and went into the office and I believe got him two pads. At that time, he identified himself as the man from Rug Life.

DeDUNN, JOHN GASPA, a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ray:

I live at 9337 Peter Hunt Street, Detroit, Michigan. I was employed by the Roadway Transit for about nine years off and on, starting in the year 1930. I was off 1936 and part of 1937. I was employed at the 14th Street office as chauffeur. At that time I was driving a truck of my own. I was an independent contractor and rented my truck to the Roadway Transit Company.

I can identify Government's Exhibit 177. I delivered this shipment. I identify it by the six boxes of rug cleaning fluid. I identify it by the boxes that were shipped. This shipment is no different than the rest of the shipments I delivered, the boxes. My signature appears on there on the right-hand side of the bill. It is dated September 15, 1938. I picked it up at the Roadway Transit dock, 6050 Fourteenth Street, Detroit, and delivered it to 6011 Twelfth [fol. 356] Street, J. E. Johnson Cartage Company. I did not deliver them to anybody in particular at the J. E. Johnson Company. A man by the name of Matt Wilbur receipted for the shipment, but I don't know whether he was Matt Wilbur or not. I have not seen him on any other occasion. This man brought the money out with the bills. I went in the office and he gave me the money. I mean he went in the office of J. E. Johnson Cartage, came out and

paid me. When I first arrived, with the boxes, he was waiting on the street for me, went into the office and got the money to pay me.

I identify Government's Exhibit 184 by my signature on the right-hand side of the bill. It is a delivery receipt dated February 15, 1938. On that day I was working for Roadway and they told me to deliver those six boxes of rug cleaning fluid to 6011 12th Street, J. E. Johnson Cartage Company. I made the delivery, but to no one in particular. In again looking at the exhibit, my memory is refreshed. I delivered the shipment the same as before. There was a man waiting at the cartage door for the shipment. I backed the car in the cartage. They placed a skid on the truck and skidded the boxes off. After that a man came over and took my bills into the office. He signed my bill and went somewhere else and got the money and brought back the money and gave it to me. According to the bill, that man was J. Johnson. It was not the same man who receipted before.

I identify Government's Exhibit 185 by my signature on the right-hand side of the bill. It is a delivery receipt dated January 11, 1938. The same thing happened on this day as before. I made the delivery to 6011 12th Street, J. E. Johnson Cartage Company. A man by the name of J. Bausthkill received the delivery. It was signed by the same man who had signed the name J. Johnson. I have never seen this Mr. Johnson since the delivery of this particular shipment.

Mr. May: Just a minute—that is all.

I would like to move, on behalf of the defendants Klein and Frank, to strike from the record the testimony of this witness on the ground that it has no connection with [fol. 357] those two defendants; it has, if anything, with the other indictment which these defendants are now charged, no connection.

The Court: What did you claim for this?

Mr. Hopping: This is the delivery to one of the places mentioned in the indictment of some of the alcohol shown by the exhibits previously identified as having come from Chicago, the exhibits which this witness identified as having delivered and having receipted at 6011 12th Street on the delivery receipts of the Roadway Transit, from shipments originating from Chicago in the name of Rug Life, signed for by M. E. Johnson, and I believe it is proper

also to point out that there was a statement made to the Court and jury at the beginning of the trial on behalf of the defendant, J. E. Johnson, in this case, in which counsel stated for Mr. Johnson that—

Mr. May: He is not on trial now.

Mr. Hopping: No, but we are showing the conspiracy as charged in the indictment, and—

The Court: He pled guilty.

Mr. May: Yes, started out—

Mr. Hopping: But in the trial there was a statement on behalf of J. E. Johnson.

The Court: Motion denied.

Mr. May: Exception.

Mr. Frederick: Exception.

Cross-examination.

By Mr. Fischer:

So far as I know, I am not a defendant in this case. I was subpoenaed. The time I rented my truck to the Roadway they sometimes paid me by the hour and sometimes by the week. At the time of the shipments I have just testified to, I was being paid a salary of Forty-Five Dollars a week. Sometimes it included the cost of operating the truck and sometimes it didn't. If business was good, they would furnish gas and repairs. Other times they gave me more.

I had an open stake truck. I remember these shipments. There was nothing unusual about them, nor about the [fol. 358] boxes. I have not hauled boxes similar to these for Roadway, though I have hauled all kinds of boxes for them. I have seen boxes of this type.

GLEISER, CHARLES W., called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hopping:

I am in the moving and storage business at 3454 Mack Avenue. The name of my company is the Mack Avenue

Storage Company. I have been in business there under that name since 1908. I have three warehouse units, one at 4771 Dubois, one at 4535 Beaufait, and our storage at 3454 Mack. I personally supervise the records and manage the business.

I recognize Government's Exhibit 55 as bearing our man Stokes' initials. He signed for five boxes of cleaning fluid. Mr. Stokes has been employed by me since 1931. He is an all around man and works at all three warehouses. Most of the time he stays at the office, which is 3454 Mack.

We have records which were made under my supervision of the first shipments that came in. These pertain to the shipments Mr. Stokes signed for in Exhibit 55. The records are of storage paid, labor paid. I have the record with me, which we call our storage book. It is an original record and kept in the ordinary course of business. It covers November 19, 1936 to April 28, 1937. The heading of the account is, "D. Wilson, in care of the Star Products Company." It appears on page 176, lot number 1299. All of the entries on that page are in the name of D. Wilson, the account of Star Products Company. This records the storage accounts and any advanced charges. This is all of the storage account from November 19, 1936 to April 28th, which would give storage to May, 1937. It shows payment of storage charges in the amount of One Hundred Eighty Dollars.

[fol. 359] I received those payments. The man who gave them to me was known by me as D. Wilson. I saw him in my office when he came in to pay his charges. The first time I saw him was about four days previous to November 19, 1936, when he came in to 3454 Mack to inquire as to storage rates and space. I asked him what he wished to store and he told me he was state distributor for the Star Products Company and wanted to store an article known as rug cleaning fluid. I asked him how it came, and he informed me that it came in boxes. He said he was a distributor and would want access to the goods sometimes once a day. As he sold the merchandise, he would expect to come and get it for himself to distribute it. He then left saying he would let me know. I called my son over and introduced him to the man and told him the rate I had given him. I asked how often he would be there, and he said sometimes once a day and sometimes twice, depending on how he sold the merchandise. It developed to be more of

a labor proposition, in that we would have to send a man over and let him in and take the goods out as he wanted them, also receive them as he shipped them to us.

After November 19th, I found he paid a month's storage. The first shipment came in on November 19th and were taken out immediately. Another shipment was received on November 23rd; which was taken out immediately. The same was true of a shipment on November 25th. Due to the fact we could not keep up with these amounts of boxes, we wished to put the entire responsibility on him. He refused to keep a record of them, because we could not keep such a record. We continued to accept goods when he shipped them to us. On November 23rd, a shipment came with \$5.04 charges. We paid that November 25th, and another shipment came in which was \$6.36. November 27th another shipment came in, which was \$6.36.

We then told him due to my son and I being out, we might not have cash money and we would have to pay for these shipments by check; since there might not be anyone there to sign the checks, we told him he should leave the [fol. 360] advance charges. We did not want to lay out this money, because we had two young ladies in the office who would not be able to accept goods because of the signing of checks. He, therefore, always left five, six, or seven dollars in advance, when he came to pick up merchandise when we knew there was another shipment coming. We would pay it out of that, so thereafter there were no more advanced charges. Our records show nothing with respect to shipments after that.

We had to send a man with them when the shipments came in. The Star Products man, whom I knew by the name of Wilson would come in and we would send our man over to the warehouse at 4535 Beaufait to let him in. He would take out the merchandise and go about his business. The merchandise was brought by the Roadway Transit Company. The Roadway Transit man would bring it to the main office on Mack Avenue. We would send a man over with it, pay him the money, receipt for the shipment, and our man would help him unload it. We paid the Roadway Transit out of the deposit which had been left by the Star Products man. Mr. Wilson would call up when he was coming over. He would stop at the office and tell us he was after merchandise. If there were none of our men working at the warehouse, we would send one over

to let him in. The majority of the times, we sent Mr. Stokes. This practice continued for the time as on record, that is, from November, 1936 until April, 1937.

According to the last entry, the last storage was paid on April 28th. The storage was due on the 19th. His payment was a week or so late. This gave him storage privileges to May 1937. Nothing that I know of happened in May of 1937; his account just expired. We never saw him again.

At the time the account expired, there were boxes similar to Exhibit 73 in the Beaufait Street Warehouse, as well as four or five cans. These cans were in the boxes. I had seen these boxes occasionally before that in the Beaufait Street warehouse. I do not think there were ever more than five or six boxes there at any time that [fol. 361] I saw them. Five or six boxes would come at a time, and would then be taken out a day or two following by Wilson. I never knew him by any other name than Wilson during the time this account was running. During this time I would say I only saw him about a half dozen times. Always at the office. I never went to the Beaufait Street warehouse with him. He never told me anything else about the kind of business he was in, or the contents of the cans in the boxes.

I have appeared before the Grand Jury in connection with this case. At that time I did not see the man who introduced himself as the D. Wilson of the Star Products. Today is the first day I have been present during this trial.

(Thereupon a picture was shown the witness.)

I have never seen the man Wilson without a hat. This man is bald headed here. It is hard to identify him.

In this series of photostats, I identify the signature of E. Stokes, my handyman, upon Exhibits 18, 19, 22, 23, 26A, 26, 27, 28, 29, 33, 35, 36, 39, 40, 41, 42, 44, 46, 47, 48, 49, 50, 52, 53, 54, 56. Exhibit 55 bears my son's signature. Exhibit 51 has the signature of Miss McKay, one of our employees. Exhibit 45 has the signature of Mr. Stribby, one of our employees. Exhibit 43 has the signature of Mr. Smith, one of our employees. Exhibit 34 has the signature of my son, H. A. Gleiser. Exhibit 32 has the signature of Mr. Zink, one of the employees. I cannot make out the signature on Exhibit 31. Exhibit 30 has

the signature of my son. There is no signature on Exhibits 24 or 25. Exhibit 21 is one I signed.

I did not go to the Beaufait warehouse with the Roadway driver on the shipment represented by the exhibit I signed. There was probably someone at the warehouse taking out other merchandise or putting some in. I signed for it at the office and paid him. I did not personally see the shipment of boxes I signed for. We would call the warehouse and tell them what was on the shipment and to okay it. We did not have a man regularly stationed at the Beaufait warehouse. On occasions we sent a man from the main office. He would return. It [fol. 362] would take about a half hour to make the deliveries over to the Beaufait warehouse. It is only four or five blocks away. Our man would not go with the Roadway truck, he would take his own car. He would go at the same time the Roadway delivered the shipment and would be back at our office in about thirty-five or forty minutes, sometimes a half hour.

There was no time that I recall that any of our employees had anything to do with handling the shipments of the Star Products, except to take them from the Roadway dock and receipt them in the warehouse at Beaufait Street. I personally supervised the business of our warehouse during this period of time. Mr. Stokes' signature appears on the Exhibits 20 and 28.

Cross-examination.

By Mr. Fischer:

I am fifty-six years old, and have been in the warehouse and storage business since 1930. Prior to that, I was in the moving business, moving household goods. That was located right next door to 3454 Mack Avenue. The Mack Avenue warehouse is a Michigan corporation. I am president. I also am the general manager in that I run the business. We have about thirty employees. When I am not there, my son takes charge. There are five employees in the office. Of the others, four are salesmen, five now, about eighteen drivers and helpers. We have fifteen moving vans. They have from 500 to 2,000 cubic feet capacity each. There are two and two and one-half ton trucks. The name, Mack Avenue Moving & Storage

appears on each of the vans. In those vans, we only move household goods.

Besides this account, we had some other commercial accounts. We had one chemical account. We had never received any merchandise in boxes marked similar to the merchandise in this instance. There was nothing unusual about these boxes as they came to our warehouse. On these shipments, I saw the boxes five or six times. It was a half dozen times that I went to the Beaufait Street warehouse. This would be when my presence was required [fol. 363] quired. I would check on the condition of the warehouse. My presence was required sometimes when we had a packing job over there. I would go over to oversee it. We would have boxes prepared and put the merchandise in there, which is usual in the warehouse business.

Mr. Wilson did not come in to rent space. He merely mentioned transit storage. The goods he was shipping was to be distributed. He was acting as a distributor. This is different from renting space. It is storage. It is called open transit storage. Other merchandise was stored on the same floor. The Beaufait Street warehouse is a three-story building. This merchandise was stored on the first floor. We charged Mr. Wilson Thirty Dollars a month. This did not include movement from the Mack Avenue warehouse to the Beaufait Street. The Roadway delivered direct. I think I was there once when the merchandise was unloaded. The driver of the truck would take a skid plank and slide them off. Mr. Stokes was present every time he signed those signatures. I was not present all the time Stokes was there. I assume that because his name appears here. That would be true of any other signature that might be here. I assume Mr. Stokes merely accepted the goods and signed for them and put them to one side. He is not here.

Of the Thirty Dollars a month, I would say about Five Dollars was for the space and Twenty-Five Dollars for handling, that is, loading and unloading. We did no packing. Miss McKay was the stenographer in our office. She prepared most of these records. This deposit was left with her. Prior to the making of this deposit, we had advanced money on three occasions. It was Six Dollars and some cents, if I recall rightly. This occurred when a Roadway man came and merely gave us a freight bill.

It was about four days after my first conversation with Mr. Wilson, that we made these advances. At that time, he had paid the first month's storage, but left no advanced charges. The freight came prepaid.

I can't remember the last time I went to the Beaufait Street warehouse. The box I testified as having discovered there was reported to me after this man had remained [fol. 364] away. We hadn't seen him after the expiration of his storage time, which was May 19, 1937. It was about thirty days later that Mr. Stokes reported that he had left a box there. The box contained five sealed cartons. We have no rooms in any of our warehouses. Our storage is fire proof open storage. The reason this storage was placed on Beaufait rather than on Mack Avenue address. Because of the driveway, it would have been inconvenient for a truck to unload at odd times. It was done for convenience and not because of any suspicion of the shipments.

Mr. Wilson usually left about Ten Dollars on deposit with our company. The first time he left it must have been shortly after November 27th, because that was the last time we advanced charges. I do not know of any occasion that the Ten Dollar deposit did not suffice.

On Exhibits 17 to 55, inclusive, the signatures marked "Paid" represent the freight charges. I do not know whose signatures appear thereunder. I assume Wright was the name of the driver for Roadway. I have no recollection how many different drivers there were. The first time I talked to Mr. Wilson, he told me that the Star Products Company manufactured a chemical known as Rug Life. He said it was a cleaning fluid. I never suspected otherwise, during the time I was doing business with him. I appeared before the Grand Jury.

During the time the officers of the United States Government were investigating this, they talked with me. That was early last Summer—1939. Mr. King and Mr. Blundquist talked to me at my office on Mack Avenue. They checked to see if I had transferred goods for the Star Products Company. I told them I had not. I talked with them three or four times after that. I also talked with them before I went into the Grand Jury room.

Mr. Stokes is an all-around man. He packs away storage, checking storage, driving a van, he is capable of packing and unpacking crates or any branch of the industry. He stores merchandise regularly, but does not crate merchandise so often. They are a half dozen [fol. 365] other men there that are capable of crating also. There is an elevator in the Beaufait warehouse. Any one of our men run it. We do not let outsiders run it. The Beaufait Street warehouse is not a very active one. It is not sufficiently active to have a man there permanently.

I was never present when any of these boxes were opened, nor did Mr. Stokes ever tell me of seeing any of the merchandise in them. I saw an open box which contained the cartons sometime back. It was during the six months that we did business with Mr. Wilson. I did not have either a telephone number or a mailing address for the Star Products Company. The payments for storage were made monthly, I assume by Mr. Wilson. They were paid to whoever happened to be at the counter whenever he came in. I assume it was paid by cash. I cannot tell from my records. We ship merchandise out of our warehouses by van service or freight. We make no deliveries to other cartage companies. We do deliver to railroads. We do not have our own form of bill of lading. When we do have merchandise to ship, we get the bill of lading from the particular line over which the merchandise is to be hauled. We make out the bill of lading ourselves. This is customary in our business and happens frequently. I am here under subpoena and am not a defendant.

Redirect examination.

By Mr. Hopping:

During the time I made out bills of lading to ship merchandise, it was furniture and household goods, or if a man wanted a piece of machinery crated or anything like that. In those instances we filled out the bill of lading and described the merchandise and, therefore, saw that the description fitted the merchandise. We never shipped any canned liquid for any customer. I think it was last December or January I appeared before the Grand Jury. At that time I signed a waiver of immunity.

[fol. 366] Cross-examination.

By Mr. May:

I was never arrested in connection with this case. I have been arrested and convicted. I was charged with possession of illegal spirits. I was fined Five Hundred Dollars in Federal Court. That was ten or twelve years back under the old Prohibition law.

I did testify on direct examination that I saw one of these large wooden boxes containing four or five cartons. I at no time examined the contents. These people did not come back for their merchandise. Despite that, I never looked to see what was in there. I did have a warehouse man's lien on that. There wasn't any rent coming, the man stayed away. He was away from 1937 until the officers came and made inquiries. We let it stand there. I would say it was two years from the time I last saw the man until the officers came in connection with the case. I did not have any rent coming to me. We had closed the account. I would say we closed the account two months after Wilson left. We did not have any rent coming. I considered the account paid. We just left the box set there. They were sitting in a room by themselves. There was a mark on the carton on the outside. The boxes contained sealed cartons. I haven't the slightest idea how a man could inspect them. There was no odor to them. After I saw Mr. King with reference to this case, the boxes were opened. The box was opened before Mr. King came. I did not examine the contents prior to Mr. King coming there. The box had been opened and was left that way. The cans were not open. One of them leaked and was thrown out. This was done under my supervision. I did not smell the contents. I did not know what was in the cans. They told me it was rug cleaning fluid.

No one connected with my storage company was arrested in connection with this case. I told Mr. King everything I am telling here now. That was in the Summer of 1939. I testified before the Grand Jury four or five months back. I signed a waiver of immunity upon [fol. 367] the advice of counsel. Mr. King and Mr. Blumquist took the boxes and the cans.

Redirect examination.

By Mr. Hopping:

Some of the cans were thrown out. Of the five cans that were there May, 1937, two were leaking, because they rusted through. It was reported to me. I told the man to throw them out and leave the other three there. I think there were three there when the officers took the box. I do not know what disposition was made of them.

I think I am the Charles Gleiser, who is named as a co-conspirator, but not a defendant. I think I was so advised. The Edwin Stokes, who was employed by me in 1936 and 1937 is still in my employ. He was present at the Grand Jury the same time I was there and signed a waiver of immunity. I will ask Edwin Stokes to be present in the court room here next Monday afternoon.

Cross-examination.

By Mr. Fischer:

We took some boxes from Mr. Wilson in exchange for opening them up and for keeping the place clean. He messed it up when he started opening them. I kept the boxes. As to the allowance of any credit for them, I intended to raise his rent because of the labor connected with it. It was worth Ten or Fifteen Dollars more for the trouble he was causing us in running back and forth. He wanted to sell us the boxes, but we wouldn't buy them. I wouldn't say that we allowed Ten or Fifteen Dollars in just those words. He wanted to sell the boxes. We didn't buy them, because we thought the job was worth more money. The labor that I thought justified the increase was having the boys go back and forth to let these men in and waiting on him and helping him to load the truck. We used the boxes as a packing hamper.

I think it was in 1938 that I was first informed about any liquors in the packages. That was after I had ceased doing business with him. I was so told by our warehouse [fol. 368] man Stokes. He told me they were leaking and said that the stuff that was leaking out was like a soapy suds. I didn't see them. Upon my previous arrest, that I testified to, none of the men involved in that had any relations with Mr. Wilson. No one connected with this

case that I have seen in the court room had anything to do with it. None of the same government men had anything to do with it. This took place at 3456 Mack Avenue, next door to the warehouse address.

HIXTON, LOUIS H., having been previously sworn, resumed the stand and testified further, as follows:

Direct examination.

By Mr. Hopping:

Q. Will you read the statement given to you by Harry Klein?

Mr. Frederick: Before the statement is read, I wish to note the objection, that the statement of one co-defendant be considered only against the one making it and disregard as to the other defendants upon the trial.

Mr. Fischer: If the Court please, I wish to make the objection on behalf of defendants Stevens and Barrett to the admissibility of this statement of one man, or one co-conspirator, as against the others after the termination of the conspiracy, that it is not admissible and may be prejudicial.

The Court: It may be read.

Mr. Fischer: Exception.

Mr. Frederick: Exception.

The Court: And not binding upon any other defendant except the man who makes the statement.

A. Harry Klein, being first warned of his constitutional rights in that he need not answer any questions unless he cares to, and that any questions he does answer will be used against him in connection with the violation in which he is being questioned, makes the following statement:

{fol. 369} "My name is Harry Klein. I was born forty-six years ago in Hungary, and came to the United States in 1914. I took out my citizenship papers in Detroit, Michigan, in 1922 and am now a citizen. I was married in 1922 and have three children, one of whom is four years old and two of whom are going to be sixteen years old on April

25, 1940. When I first came to the United States I worked in a bakery shop in New York. I came to Detroit in 1916 and got a job in a factory where I worked until 1920. Then I worked as a news agent for the Union News Company, working on the Michigan Central Railroad enroute between Detroit and Chicago and Detroit and Mackinac, and I worked there until 1925. While working for the Union News Company I was employed under the name of Harry Klein and also under other names. During the time I was employed at this job, some man asked me to bring through a package from Chicago which I later found contained Imperial whiskey caps. This is the first time that I had handled anything connected with illicit whiskey. I continued to bring these packages through from Chicago and turned them over to Al Kauf, now deceased. After I brought this stuff from Chicago for a period of time, a man by the name of Jake Hoffman had a proposition to make in which I was to go in as a partner with him in the cap and label business.

"I quit the News at this time and went into partnership with him for a period of about one year. Then I went away on a three-months' vacation and when I came back the business was all broken up and I split up the partnership with Hoffman. I then went into the label business on my own. During the time I was in partnership with Hoffman I was only handling labels, but Hoffman was handling alcohol also. At this time I was residing on Hastings between Theodore and Farnsworth Avenues.

"It was during this time that I got acquainted with Gus Pines and Louis Steele. They were in business on Hastings between Medbury and Henry in what was called the 'Specialty.' They handled bottles, wrappers, corks, labels, straws, and flavors of all kinds, such as Bourbon, Scotch, Rye and Gin."

[fol. 370] The Court: You understand, there are some there that are not to be read.

The Witness: Yes, Your Honor.

"As I recall now, I remained at the office at Blaine and Linwood until around 1931. Directly after this seizure was made, the office was moved from the upholstery shop on Blaine and Linwood to the corner of Monterey and

Linwood. This office was on the second floor of the building on the southeast corner of Monterey and Linwood. The office was used for a period of about a year until 1932. At this office I was more or less of a silent partner. While I received a salary from them, I was not at the office very much and most of the business was carried on by Jack Silverman and the other man associated with him. These men took everything away from me and carried on the label business as well as the alcohol business. I continued to receive a salary of \$50.00 a week from the office; then the salary was cut to \$25.00 and later I received no salary at all.

"At about this time I went into the bookie business as a partner, operating a bookie on Dexter Boulevard and Richton in a cigar store. My partner at this time was Max Bottner. Our place on Dexter and Richton got raided and we opened up a bookie at Ravenswood and Grand River. We continued to operate the bookie at Ravenswood and Grand River for a period of time when this one was raided. We moved the bookie to 9662 Grand River Avenue. Then I dissolved partnership with Max Bottner and borrowed \$200.00 from Izzy Burnstein to pay off Max Bottner. Then I went into partnership with Izzy Burnstein. I took full charge of this bookie for a period of time and ran it myself, Izzy Burnstein being the partner. The book was operated at 9662 Grand River, which is on the second floor of the building, for a period of about a year. Then it was raided by the police. I moved the bookie then downstairs to 9666 Grand River, which is a bowling alley and a recreation room. The bookie was operated in the rear of the bowling alley in a garage attached to the building. During the time that I was operating this bookie at 9666 and 9662 Grand River, there were numerous customers who came to the [fol.371] bookie, some of whom were bootleggers that had known me over a period of years.

"These bootleggers had known that I had been in the alcohol business and perhaps that accounts for their coming to my bookie to play the horses, to give me the business. Some of these men were as follows: Dave Fidler, Hank Skampo, Clarence Dracka, Harry Braverman, Louis Klein, Harry Fleisher, Joe Stein, Lou Steele, Joe Martin, and William O'Brien. Over a period of years, when I was on Hastings Street and on 12th Street, as well as the upholstery shop on Linwood, I had known a man by the name

of Joe Martin. Joe Martin handled at that time, entirely, moonshine. He had been operating moonshine stills about the city of Detroit. I had never had any business with him. At the time the office was at Monterey and Linwood Martin came to the office and wanted to sell the boys some alcohol. He at this time was handling alcohol. The boys at the office did not want to buy from Joe Martin. However, due to the fact that Joe Martin was a Hungarian, a fellow countryman of mine, I interceded for him and had the boys buy alcohol from Martin.

"This was the first business I had ever been connected in with Joe Martin. I have here used the name of Joe Martin. However, at that particular time I only knew him by the name of Harry Roumanisher. After I had moved over to the Grand River address at 9662 and 9666 Grand River, Joe Martin used to come to the bookie playing blackjack. I knew that Joe Martin was still engaged in the alcohol business, although at first I had no dealings with him.

"During the time that the office was located on the corner of Monterey and Linwood, I became acquainted with a federal officer by the name of Firmer King. I do not know who introduced me to Firmer King and cannot recall how this meeting first took place. However, during this period of time Firmer King was keeping the office under observation. He would follow cars away from this place to the different cutting plants about the city of Detroit. I, at that time, might have been classified as an informer for Firmer King. I gave some information [fol. 372] relative to some of these places that he followed the cars to. I never actually gave Firmer King any information on these places, but I knew that he followed the cars away from the office to the spots. The other men who were in the office did not know my connections with Firmer King. Sometime during this same period of time, Firmer King and another officer by the name of Fred Murphy followed a car away from the office to my home on Cortland Avenue. The car, at this time, contained one keg of Scotch malt. I was not at home at the time, and the two officers broke in the door and entered my house. I later came home and found King and Murphy in the house. King then asked me if I lived there. I told him I did. He stated he did not know that before. The driver of this car was Joe Stein.

and upon my arrival, I found that King and Murphy had placed him under arrest. After explaining to Firmer King that I lived at the place, Mr. King told Murphy that I was all right, and they left the premises. They released Joe Stein and did not make an arrest. They left the keg of malt in my possession. Joe Stein was not working for me at the time. He was the driver at the office. From this period on, I became very well acquainted with both Firmer King and Fred Murphy. Sometime after this I became interested in a patent for ageing of whiskey. I was very intimate with Murphy and King at this time, and I explained to Murphy about this patent. He stated to me that it would be a good chance for me to meet Jimmy Carroll, son of the Liquor Commissioner for the State of Michigan, George Carroll; that through them I might be able to make a deal whereby I could get this liquor placed in Michigan liquor stores. I went with Fred Murphy and was introduced to Jimmie Carroll. There were considerable arrangements in regard to this patent between Carroll, Firmer King, Murphy, and members of the Michigan State Liquor Control Commission. I even went to Lansing, to see Mr. Harris, the Purchasing Agent for the State of Michigan. However, no sales of this whiskey were ever made to the State of Michigan. During this period when I was working on this whiskey patent, [fol. 373] I was introduced to another Federal agent by Firmer King. This man was Joe Leeson. I met him at a blind pig operated by a woman by the name of Mabel. As I recall now, this was on Hubbell or Hartwell, near Chicago Boulevard. This blind pig was a hangout for several of the different Federal officers. At this same place I was later introduced to a Federal officer by the name of Bob White. Firmer King, Bob White and Fred Murphy used to come to this place and drink on many occasions, on which occasions I was also present. At times these officers would get very drunk and they would stay all night in the place. This was a private seven-room house, equipped as a private residence. After I became acquainted with Joe Leeson, I found that he was living at the Wolverine Hotel. On many occasions I visited him at his room. Leeson, King, and Bob White drank heavily, and on most of these meetings there would be considerable drinking."

Mr. May: We cannot understand. He is reading too fast and mumbling.

A. "It was during this period that King, Murphy, and Leeson asked me about the ownership of some stills that they had located about the city. One particular case that I recall was a still that belonged to Yonkel (Polack) and Harry Livingstone. Murphy asked me to contact Yonkel and Livingstone and ask them if they owned this still. At the time that he asked me this, I was in Murphy's room, which was, as I recall now, in the Detroit Hotel. I contacted Yonkel and Harry Livingstone, and they told me that they had operated a still at the location Murphy had given, but that they were moving it out. I returned to the Hotel and reported this to Murphy. Murphy then called Leeson in my presence, and asked him to come and assist him in raiding this still site. I understood later that Firmer King was watching the premises for a few days prior to the time Murphy spoke to me about it, and later there was considerable argument between Joe Leeson and Firmer King while they were drinking. I was present at this argument. This took place in one of the hotel rooms, either the room of Leeson or Murphy. Leeson and Murphy accused King of [fol. 374] double-crossing them in that while he was watching the place, he must have allowed them to move the still. There was considerable argument, and Leeson told Firmer King that he was going to kill him for double-crossing him. They wrestled on the bed, and Murphy separated them. Later, Joe Leeson and Firmer King became good friends again. Later on, on many occasions I met Joe Leeson, Firmer King, Fred Murphy, and Bob White at different roadhouses about the city of Detroit. On these occasions they would be drinking. During all this period I became very intimate with all of the above named Federal officers. They would ask me for information regarding the different stills and cutting plants about the city, and I would furnish this information. All during this same period I was operating the 'Bookie' at 9662 and 9666 Grand River. On many occasions these above named officers would come to the bowling alley and bowl. On many other occasions they would come there and go to the Palmetto Cafe, which was next door to the bowling alley, and drink. On many of these occasions I was with them. Up to this time there had never been any money transacted between me and

any of these men. We talked freely about their work in the Federal Department and about the alcohol business about the city of Detroit."

Skip a paragraph.

"It was about this same period that Fred Murphy quit the Government service, and, as I understood, left the State of Michigan. I have never seen Fred Murphy since that time. The friendship between Leeson, Firmer King, Bob White, and myself continued. Sometime during the early part of 1935, Joe Martin came to me and wanted to borrow \$300.00 to assist him in the operation of a distillery. He wanted this \$300.00 to buy molasses. I loaned Joe Martin this money. Joe Martin had been playing blackjack in my 'Bookie' and lost the money that he was going to use to buy the molasses. This is the reason he borrowed the money from me. At this time when I loaned Martin \$300.00 and he was operating only a small alcohol still, I did not know the exact location of this still. I had talked this over with King. [fol. 375] King knew the location of this still. During this time, Bob White tried to find out from the location of Martin's still. I did not tell him, as I did not know the exact location, myself. I was trying to find out this location, but Martin would not tell me. Joe Martin knew that I was on very friendly terms with the Federal officers, Firmer King, Bob White, Joe Leeson, and I asked Martin to open up a larger spot, and that we would be able to run it. I was to be taken in as a partner in the new location. I explained to Martin that we would be able to run this because we would cut Joe Leeson and Bob White in on the operation of this still for \$200.00 a week. I went with Martin and looked over several places about the city to locate a still site. One place that we looked over was on Wabash Avenue. I do not remember the number. As I recall now, there was an electric company in the building. At the time I gave Joe Martin his \$300.00, I was supposed to become a partner with him in the Livernois still. This was a small still. I spoke to Martin about cutting Leeson and White in on this still for so much a week. Martin refused to do this, saying it was a small still and there was not enough money to cut them in. I told Joe Leeson and Bob White that I had spoken to Martin about cutting them in, and they get so much a week, and that Martin stated it was too small a still and that there was not enough money to do that. We were then going to set up

a larger still where we would be able to pay White and Leeson. However, the larger still that we were supposed to set up was never set up. During this time Bob White used to come to my "Bookie" on Grand River and play blackjack. On numerous occasions when he lost money, I returned this money to him. When he won money, this money he kept. I was given to understand by White at this time that he was not being paid by the Government. I also, at this same time, loaned Bob White \$200.00 and other loans, the amounts of which I do not recall."

[fol. 376] Redirect examination.

By Mr. Hopping:

Mr. Hopping: If the Court please, I move the admission to practice in this Court, Mr. John E. Dougherty, of Peoria, Illinois, who is appearing here now for the defendant Al Wainer. Mr. Dougherty, I think, is admitted to practice in the United States Supreme Court.

The Court: All right. Administer an oath.

A. Yes, sir. (Reading): "None of these loans have been returned by Bob White to me. He has promised me that when he made some money out of a piston enterprise he was interested in he would return this money to me.

"I have never given Joe Leeson any money, but Joe Leeson offered to loan me some money to finance my 'Bookie' establishment which was losing money. The only thing I ever gave Joe Leeson was to send a bottle of whiskey or wine out to his girl's house for him on several occasions.

"During this interval, Leeson was out of the city a great deal. It was about this same time that Joe Leeson's girl died. Her home formerly had been in Toledo. This girl's name was Miss Demar. I do not know her first name.

"During this period of 1935, up until the still was seized and I was on intimate terms with Bob White and Joe Leeson, I told them I was a partner with Martin in this still. Except for the money I gave to White when he was playing blackjack, and money I loaned him, I never gave him or Joe Leeson any other money.

"During the time I was partners with Martin, to the best of my knowledge, there was only one time when a load of alcohol was delivered to my own garage. I objected to

Martin using my garage as an alcohol plant and I do not recall of having any delivered there except on that occasion.

"In some of the conversations with Joe Leeson, I was told by him that he was a wire technician. I mean by that that he was placing wire taps on bootleggers' telephones. He told me that he had placed a wire tap on a sugar house [fol. 377] in Cleveland. At no time did he ever tell me that — was going to tap my own personal wire and at no time did he ever tell me he was going to place a tap on any other telephone in Detroit.

"On one occasion, I received a telephone call from Joe Leeson and he told me to come down to his hotel room in the Fort Shelby. I went to this hotel and there was introduced to a Federal officer by the name of Beard. Beard asked me for some information regarding bootlegging activities in the City of Detroit and Cleveland. He mentioned a name in Cleveland but I did not know that person's name and did not give him any information.

"Also, Frank Carr and other Federal officers used to come to my 'Bookie' and ask me for information about bootlegging activities in the City of Detroit. I do not recall at this time any information I ever gave him but I tried to help whenever he came.

"After the still was seized on Livernois avenue by Federal officers, which as I recall was in June, 1935, I went out of the alcohol business and did not have any further contact in it.

"On one occasion, I met Joe Leeson at the Palmetto Cafe at Grand River, next door to my 'Bookie.' I was in the Cafe at this time with my wife. I told Leeson I thought I knew the location of a big still. I got in Joe Leeson's car with my wife and Leeson, drove down Livernois across Fort street and I pointed out a building where I had information there was a still. This still was located in what was known as the Federal Warehouse. This still I later found out belonged to Harry Fleisher and other members of the Purple Gang. I pointed this location out to Leeson and later he told me that he had tapped a wire in Cleveland on some sugar house and through this tap had traced the sugar from Cleveland to the still, and that the still was seized by the Federal officers. The place was taken before any sugar was traced to the warehouse, however.

"In between the time I showed Leeson the still site at the Federal Warehouse, and the time it was seized by Federal

officers, I told Bob White that I had pointed out a spot where a still was being operated to Leeson. Bob White did not ask me where the place was located.

[fol. 378] "On the day this alcohol still was seized, Harry Fleisher came to my 'Bookie' on Grand River avenue and asked me where Joe Martin's still was located. He stated that he wanted to hijack the still. When Harry Fleisher came to the 'Bookie,' somebody brought him in the car and left. Fleisher asked me to get a car and take him down to where his car was located. I borrowed a car from a boy who was working for me by the name of 'Butch' and Fleisher and I got into the car, with Fleisher driving. He drove to the front of the Milford Garage, at the corner of Milford and East Grand Boulevard. I at this time became worried, because I thought Fleisher might be taking me for a ride, and that perhaps Fleisher had found out that I had given the information to the 'Feds' that the still was located in the Federal Warehouse. We drove up in front of the Milford Garage and I saw two men standing there. Harry Fleisher stopped the car and a Federal officer (whom I now know by the name of Carr) showed me his badge. Fleisher jumped out and ran away. I was placed under arrest by Officer Carr.

"Shortly thereafter, Carr called upon the telephone in my presence and I heard him state that he had arrested Harry Klein. A few minutes later, White came to the Milford Garage and he talked to me. I told White at that time that he knew this place did not belong to me and I — no connection with it. I told him before that I had given this information about this still to Joe Leeson. White stated that he knew I had nothing to do with it and everything would be taken care of. I was brought to the office of the Federal officers, fingerprinted, and a statement taken. Later I was arraigned and placed under \$1,000 bond. At the hearing before the U. S. Commissioner I was dismissed and was never connected with any investigation conducted by Government officers in connection with that seizure.

"At this time, Harry Fleisher left the City of Detroit, and the Federal officers were searching for him. There was a warrant out for him, and Bob White talked to me on several occasions about trying to get Fleisher back for trial. White told me that if Fleisher would come back and give himself up, he would see to it that Fleisher only got a six

[fol. 379] month sentence. I told White I would see what could be done. I went to Izzy Burnstein, who was in that period connected with the Purple Gang and told him that Bob White, the Federal officer, had told me that if Fleisher would return and give himself up he would see to it he only got six months. I was not present, although I was told by Bob White, that he met somebody in connection with Burnstein and Fleisher and talked the matter over with them about the six-month sentence, and the following day Fleisher returned to Detroit and surrendered. He later stood trial in Detroit and received a sentence of eight years for bootlegging.

"During the year 1935, Harry Braverman was about my 'Bookie' on Grand River on numerous occasions. Harry Braverman is a distant relative of mine.

"In 1936, my brother Louis Klein was in the alcohol business. He was getting alcohol from Chicago. I do not know whom he was buying it from. Louis Klein was selling some of this alcohol to Dave Fidler. Fidler and Louis, my brother, had had some words and on two occasions my brother gave me a bill of lading calling for shipment of alcohol from Chicago over to the Cushman Motor Freight Line to give to Dave Fidler. The first of these bills of lading I gave to Dave Fidler. I do not know what Dave Fidler did with it. A short time later I again gave Dave Fidler a bill of lading for shipment of alcohol over the Cushman Motor Freight. Again Dave Fidler took the bill of lading and left. I never gave him the money for the freight charges on this shipment. On this last shipment, Fidler was arrested by the Federal authorities as he was transporting this alcohol away from the dock of the Cushman Motor Freight. He was later sentenced in the Federal Court in regard to this.

"After Dave Fidler got out on bond in connection with this arrest, he came to my place of business and told me that I should give him the money to pay for the lawyer and the bond. I told him that there was no reason for me to give him any money and we got into an argument. Fidler then struck me. I never paid Fidler's bond and did not pay money for this fine. I spoke to my brother Louis about this, but he said he had no money and never did anything about it.

[fol. 380] "I have known Clarence Dracka since 1928 or 1929. About that time he used to come to our office on Monterey and buy alcohol. I sometimes sold him the loads of alcohol. After I moved to Grand River avenue, and at the time I was in partnership with Joe Martin, I never sold him any alcohol of any kind. I never had any dealings with him in 1935, 1936 or 1937.

"I am personally acquainted with Al Wainer, of Chicago. I knew him to have been a bootlegger. I never did any business with Al Wainer in connection with any alcohol activities of any kind.

"On two Christmas seasons (I do not remember which years), I gave Christmas presents (turkey and Jewish bread) to Joe Leeson's girl and to Bob White, and to Firmer King. I did not make regular payments to them, except the loans that I made to White from time to time when he was in the card games, and the \$200.00 referred to.

"I was good to these boys, and gave them presents because I thought they would not bother anything that I had to do with whiskey.

"During the time this case was under investigation, I assisted Firmer King in making the case, giving him information that he requested, and assisted in any other way, if possible. I gave him the telephone numbers for the homes of Al Wainer and Harry Braverman, and their places of business. Firmer King explained the layout of the whole case to me; he showed me pictures of the men involved.

"On one occasion, when Firmer King was going to Chicago in connection with this case, he called me up and I met him at a saloon, when we talked over the case. A Federal officer by the name of Ramstein was with him at this time and Ramstein heard King when King asked me to go to Chicago with him to assist in regard to this case. King at this time said if I wanted to I could bring back a load with me.

"I have read the foregoing statement made by me, consisting of ten pages besides this eleventh page, and have been given an opportunity to make any corrections I so desire. This statement has been given by me freely and [fol. 381] voluntarily, without threat, promise of reward or immunity, solely that the truth may be known.

"Harry Klein."

Mr. Hopping: I call attention again, Your Honor, in this point to the record that Firmer King referred to in the statement just read by Mr. Hinton is the same Mr. King regarding,—whom it was stated a few days ago that he was a former agent of the Alcohol Tax Unit, who died January 1st or 2nd, 1940. That statement was made in the record several days ago, and I wish to state it in connection with this exhibit.

I was working primarily in Cleveland in the investigation of this case. I was present when the defendant Tony Arcodia, as well as the defendant Sebastian Ardiro, were brought into the office.

I identify Government's Exhibit 193 as a picture of Sebastian Ardiro, a defendant. I was present when the picture was taken. I identify Government's Exhibit 194 as a picture of Tony Arcodia, he is a defendant. I was present when that one was taken. Government's Exhibit 208 is a picture of Rosario Tardino, a defendant. Government's Exhibit 209 is a picture of Vincent Badalamenti, Sr., a defendant. I saw him and Rosario Tardino when they were under arrest on this indictment.

(Exhibits 193, 194, 208 and 209 were offered in evidence.)

I was in Cleveland on August 9, 1939, at which time I made an investigation at the garage in the alley of 152nd street. This is a three-car garage in the rear of 864 East 152nd street. The alley ran alongside of the house. The garage faced on the alley and was at the rear of the premises. The adjoining streets are 151st and 152nd streets. Euclid avenue was about four miles away.

On August 9th, I entered the middle stall of the three-car garage and searched the garage.

Mr. Frederick: I wish to object to anything that transpired at this garage, and not appearing,—that garage that is described, as a portion of the crime here charged, in the conspiracy here charged.

Mr. Hopping: You mean it is not mentioned in the indictment?

[fol. 382] Mr. Frederick: Neither the indictment or the proof; the only garage is the one near 152nd and Euclid.

Mr. Hopping: I believe it was mentioned in the proofs when young Carbaugh was on the stand, as being one of the places to which he delivered the boxes marked, "Rug

Life." I think you will find that in the transcript of the testimony.

The Court: He may answer.

Mr. Frederick: Exception.

Mr. Hopping: And likewise in the indictment, if the Court please, overt Act No. 8 of Indictment 25571, which is the second count of that indictment.

The garage was vacant. There was a dirt floor. On the floor were a number of signode strapping clips, pieces of wooden boxes, cardboard and so forth.

Q. And you are familiar with this box which is marked Government's Exhibit 73?

A. I am.

Q. And would you say there were pieces of wooden boxes in there,—can you tell us whether or not they were similar to this box which is Exhibit 73?

A. The pieces of boxes that were in the garage would be,—could have been slats of the top of the box, the length of the box, wholly,—just separate boards.

Mr. Frederick: Then, I ask that the testimony with references to those boxes be stricken, if the Court please.

Mr. Hopping: The other witness who testified that he delivered boxes similar to that to that place in Cleveland.

The Court: Any marks on there?

The Witness: Some of these broken boards had parts of stencilling on them, but that they would be,—only about half of the word could not be made out.

The Court: It may be received; he may answer.

Mr. Frederick: Exception.

Government's Exhibit 214 is an envelope I wrote up myself, which has my initials on it. I wrote it up directly after returning to the office after making a search of the garage. In the envelope is one of these signode strapping clips that were in the garage. I sealed it in this envelope. It was opened at the time of the Grand Jury. My estimate is that there were possibly one hundred of these signode [fol. 383] seals on the floor of the garage. There were pieces of boxes, nails, etc. Exhibit 214 was offered in evidence.

I took a statement from the defendant Allen Wainer, which is Exhibit 211.

A. (Reading): "Detroit, Michigan, February 1, 1940

Mr. Hopping: Pardon me just a moment, Mr. Hinton. Any objections to Exhibit 214?

Mr. Frederick: Yes, it is immaterial, as not being connected up with the crime here charged, and not being sufficiently identified with any of the acts of the defendants, co-conspirators in this case.

"The Court: As I understand it, it is an envelope which this witness explains he put one of those clips in and sealed it.

Mr. Hopping: Yes.

The Court: Well, the objection is sustained. It does not amount to anything.

Mr. Hopping: There is an offer pending on Exhibits 193, and 194.

The Court: Pictures?

Mr. Hopping: Yes, Your Honor.

The Court: Any objection?

Mr. May: Yes, if the Court please, on behalf of the defendants Klein and Frank, I desire to object on the grounds that they do not in any way have any connection between defendant Klein in the indictment which he is here being tried on; they are not properly identified as being the pictures of the persons whom they are supposed to represent.

The Court: Wait a moment, this man testified that they were.

Mr. May: I don't think that he is a proper person to testify to that, if the Court please; I don't think it is a proper way of identifying the pictures.

The Court: You mean they have to get the mother?

Mr. May: I mean they would have to bring in the man who took the pictures, yes.

The Court: Objection overruled.

Mr. May: Exception.

[fol. 384] Mr. Hopping: There is an offer pending on Exhibits 208 and 209, pictures also.

Mr. May: Same objections to those.

The Court: Same ruling.

Mr. May: Exception.

(Exhibits 193 and 194 were admitted in evidence.)

The Court: All right, Exhibit 211, statement of Wainer is offered in evidence.

Mr. Hopping: I show Your Honor the portions to which objection is made by counsel for certain defendants being marked with pencil near the bottom of the first page, and near the top of the third page.

The Court: He may read the portions on the first page that have been marked as objected to, and omit the portion on the third page indicated within the parentheses in the first paragraph of that page, and I again say to the jury, of course, that these statements or admissions made by the defendant in writing are only binding upon him; they do not bind any other defendant here upon trial; they only bind the person who is making the statement, so if he should refer to others involved here, it is not binding upon those defendants who are here upon trial. May be received.

A. (Reading): "Detroit, Michigan, February 5, 1940.

"Allen Wainer, first being warned of his constitutional rights in that he need not answer any questions, he cares to and any questions he does answer will be used against him in court in connection with the violation for which he is being questioned makes the following statement:

"My name is Allen Wainer. I reside at 823 Buena avenue, Chicago, Illinois. I am married and live at that address with my wife and two children.

"Since some time around the latter part of April, 1938, I have managed a liquor store at 2355 West Madison street, Chicago, Illinois. Prior to April, and for a period of one year, I was incarcerated at Atlanta, Georgia, in the Federal Penitentiary, for conspiracy and internal revenue violations on two indictments, one in the Southern District of Illinois, and the other the Northern District of Illinois.

[fol. 385] "Some time in the early spring of 1936, I came to Detroit, Michigan, and contacted Clarence Dracka and Hank Skampo relative to the shipment of alcohol from Chicago to Wyandotte, Michigan. I have been shown a picture of a man and can identify this picture as being a picture of Hank Skampo. I have placed my initials on the right-hand corner of this picture. I have been shown a picture bearing the number ME-1209 and can identify this picture as being the picture of Clarence Dracka. I have placed my initials on this picture. At the present time, I do not recall how I happened to contact Dracka and Skampo relative to these shipments.

"An agreement was decided upon between Dracka, Skampo and myself, in which I was to ship the alcohol to Wyandotte, Michigan, in care of the Wyandotte Cartage Company, 3630 Biddle avenue, Wyandotte, Michigan. I returned to Chicago and rented a space for the crating and boxing of alcohol in the Empire Warehouse, at 5041 Lake Park avenue, Chicago, Illinois. At this time, I do not recall that I rented any special room in this building. I do not recall whom I contacted relative to the renting of the room. I now believe that the renting was done by telephone.

"I was buying alcohol from Steve Scavone at that time, and after having rented the space in the warehouse I called Steve Scavone and told him to deliver me a quantity of alcohol over to the Empire Warehouse. I explained to him at this time that I wanted the alcohol to be delivered in cartons. After this delivery of alcohol was made to the warehouse by Steve Scavone's driver, I had a conversation with this driver and asked him if he wanted to make a little extra money and then instructed him to get some boxes that would hold from four to six five-gallon cans and to deliver them to the Empire Warehouse, also instructing him to fill these boxes with cans and deliver them to a trucking line, to be shipped to the Wyandotte Cartage Company, 3630 Biddle avenue, Wyandotte, Michigan. This alcohol was to be consigned from the 'Rug Life Company, Chicago, Illinois,' to a trade name in the care of the Wyandotte Cartage Company, Wyandotte, Michigan.

[fol. 386] "I have been shown a freight bill with the No. 75065, dated '4-30-36,' calling for the shipment of four boxes of 'Rugs,' and I believe this to be one of the shipments of alcohol I made from Chicago to Clarence Dracka and Hank Skampo at Wyandotte, Michigan. I recall definitely shipping alcohol consigned from the 'Rug Life Company' to the Wyandotte Cartage at Wyandotte, Michigan, at or about this particular time. As I recall, these shipments started during the month of April, 1936, and continued through the month of June, 1936.

"When I was using this storage space in the Empire Warehouse, I recall having seen a roll of strapping that was used to strengthen the boxes used for shipping the alcohol. I do not recall where this roll of strapping came from. It may have been that I purchased this roll. I cannot recall at the present time.

"I have never used the trade name 'Waukegan Chemical Company,' and do not know how that name became connected with the storage space in the Empire Warehouse.

"Around the latter part of June, 1936, I contacted Dracka and Skampo and told them that I was through with the business of shipping alcohol and was going to have nothing further to do with it. I never went to the Empire Warehouse to inform them that I was through with the business. All the equipment that I had used in the storage space, I left in the building.

"A few months after this, I was contacted in Chicago by Clarence Dracka and Hank Skampo. They at this time asked for a connection so that they could purchase alcohol in Chicago. I told them that I was through with the business, and did not even want to discuss the matter of alcohol with them and did not give them any connection. A few days later they returned to me and stated to me that they had made a connection to purchase alcohol and asked me if I would give them my tools and equipment that I had used in the shipping and crating of alcohol. I told them that they could go down to the warehouse, and if they could find any of the tools, they could have them. I did not want them for any purpose, and that I was through with the business and did not want any part of it. They wanted to pay me for the tools, and I told them that if there were [fol. 387] any tools there, I did not want any part of them. I was through with the business, and they didn't owe me anything.

"From that day on I have never had any further connections with any illicit alcohol business.

"I have been shown a picture of a man and told that his name is Harry Braverman. I know this to be a picture of Harry Braverman, of Chicago, Illinois. I have known Harry Braverman over a period of several years. I have been shown a picture of a man and can identify this picture as being a picture of Harry Klein, who is a resident of Detroit, Michigan. I met Harry Klein, for the first time, as I recall now, during the year 1934, I never had any alcohol business with Harry Klein, although I have been in his 'Bookie' in the vicinity of 9666 Grand River avenue, a few times.

"I have been shown a picture of Morris Frank, a resident of Chicago, and can identify this picture as a picture of the man known to me as Morris Frank. Morris Frank

contacted me one time when I was doing business in Galesburg, Illinois, and wanted to buy some alcohol from me.

"As I recall now, I first began to purchase alcohol from Steve Caboni, sometime around the year of 1928, and purchased it from him off and on up until I definitely quit the business in the Spring of 1936. Steve Caboni was known to me only by the name 'Steve.' I have read the foregoing statement made by me, and have been given an opportunity to make what corrections I desired. This statement has been given by me freely and voluntarily, without any threat, promise, or reward, or promise of immunity, and has been given solely that the truth might be known.

"Signed, 'Allen Wainer,' sworn to on the 5th day of February, 1940."

Q. What point in that statement, Mr. Hinton, speaks of showing a bill number 75065 to Mr. Wainer?

A. That is right.

Q. I show you Government's Exhibit number 12, and ask you if that is the bill of that number which you showed to the defendant, Wainer?

A. That is, that is date 4-30-26.

Mr. Hopping; Cross examine.

[fol. 388] Cross-examination.

By Mr. May:

I worked on this case primarily in Cleveland. Mr. King worked on the case in Detroit and Chicago. I do not think Mr. Ramstein assisted him in Detroit. Mr. Ramstein has assisted me in Detroit since January, 1940.

The statement given by the defendant Klein was taken over a period of two days. Everything that is in there was taken in that time. I questioned him several different times. I would not say it was fifteen or ten. It was several times, but I do not know exactly how many. He was incarcerated seventeen days, but was not questioned by me all that time. I could not tell you who else he might have been questioned by. I could not tell you if he was questioned by Mr. Barrage or not. I was not present at any of the other questionings, so I do not know who else questioned him. I believe he was questioned by other officers of the Alcohol Tax Unit. I was not there, so whatever

I say in reference to questioning by other officers would be hearsay. I do not know whether this statement incorporates facts he told other officers, because I do not know what he told the others. His statement, that has been given here, was not taken in question and answer form, though it started out that way and then we revised it. I revised it to use my own words. The language of the statement is not mine. I dictated it while Harry Klein was sitting there. We took each paragraph at a time as he told me his story. I dictated it and told him to change any statement in there that he wished; to stop me at any time, which he did. He changed the paragraphs to suit himself as they went along. I did not ask him to sign the stenographer's notes instead of the written statement. The one that has been read into evidence is the one I wanted him to sign.

He used the term "wire technician" in describing Mr. Leeson. Those were his words. There was a period of time when the officers of the Alcohol Tax Unit were not being paid. As I recall, that was for about four months. We had to support ourselves during that time, though we were later paid. At the end of five months our back salary was [fol. 389] given us. During those five months, I had to borrow money to live on. It could be true that some of the other agents had to do the same thing. I do not know whether that was true of Mr. White or Mr. Leeson or not.

King had been in the employ of the Alcohol Tax Unit since 1928 or 1929. Murphy, that was spoken of in the statement, had been an employee of the Government I believe from 1927 to 1933. Leeson is still working for the Alcohol Tax Unit, and at the present time is agent in charge at Cincinnati. Everything that Klein wanted was included in the statement. I know that Klein also went before the Grand Jury. I do not know whether he signed a waiver of immunity before he went before the Grand Jury or not. I do not know anything about Klein having furnished information to King, which he used in his work as an investigator of the Alcohol Tax Unit. Klein did put that in this statement. I did not check back to ascertain whether that was true. I did not know Louis Klein. I do not know whether he acted as an informer for Mr. Coyle, an agent of the Alcohol Tax Unit, or not.

Klein did not tell me in detail about the raid on the Federal warehouse by the Government officers, though he did tell me something about it. I put everything about his

connection with the giving of information to Leeson in this statement. He told me that he pointed out the still where the Federal warehouse was located to Mr. Leeson. I know the operators of that still were convicted in the United States District Court, and that some of them received eight years in the United States Penitentiary. The only mention he made of Government officers getting information in his "Bookie" and following cars away that were operated by bootleggers was with reference to the office he was maintaining on Monterey and Linwood. That is in the statement.

Mr. Barrage is an aid in our office to the Assistant District Supervisor. Klein told me that Joe Leeson had a room at the Fort Shelby Hotel. It is in the statement that Leeson called him up and he came down there and met him and was then introduced to Barrage in that room. Mr. Barrage is in the court room. Klein told me that Mr. Barrage wanted some information concerning some bootleggers [fol. 390] in Cleveland. Klein said that he could not provide such information, because he didn't know the bootleggers in Cleveland. Klein did not say anything else when Leeson asked him on the occasion of the visit to the room at the Fort Shelby. Klein said that he did withdraw and had nothing further to do with the alcohol business in 1935. He told me that Fidler, Skampo, Dracka, Braverman, Harry Fleischer, Joe Stein, Lou Steele, Joe Martin, and William O'Brien used to come into his "Bookie." I do not recall that he said they used to come into the "Bookie" to play horses and to gamble. In re-reading that portion of the statement, it is correct that he told me they came to the "Bookie" to play horses and to gamble.

He told me that he loaned some money to Bob White during 1935. The last I knew, White was in Chicago. I could not tell you of my own knowledge whether or not he was connected with the Alcohol Tax Unit. The last I knew White to have been working for the Alcohol Tax Unit was when I heard that he was subpoenaed before the Grand Jury in connection with this indictment. That was possibly two months ago. I do not know the exact date, though I believe it to be a little more than a month ago. I mean when he came here to Detroit and went before the Grand Jury, I do not know whether it was in connection with the indictment in this case or not. I didn't see him

when he was here about a month ago, though I heard he was here.

I do not know where Murphy, the former Agent of the Alcohol Tax Unit is. He is not still employed. I do not think he has been so employed since 1933. I did not question Leeson, White or Murphy relative to their connection with this case. With reference to that portion of the statement in which Klein said that he was introduced to Joe Leeson by Firmer King at a blind pig operated by a woman by the name of Mabel, and that this blind pig was a hang-out for several of the different Federal officers, at which place he was later introduced to Bob White, I can say that I do not know the place. I understand now that it was on Hartwell and not Hubbel. I have been in the place. I saw Federal officers in there on one occasion. I went there with Bob White and Firmer King was there. I did not see Lee- [fol. 391] son there. I did not see any bootleggers or alleged bootleggers in the place. It was equipped as a private home. I do not know how large a house. I was only in the kitchen or dining room and right out again. I was not there over five minutes.

Leeson lived at the Wolverine Hotel. I do not believe I was ever in his room there. I was never in his room when he was living at the Fort Shelby. I could not tell you whether or not he ever lived at the Fort Shelby.

The man spoken about in paragraph 26 of the statement as "Pupack" is, I believe, at the present time at Alcatraz for violating alcohol laws. He was one of the men that was sentenced in the Federal warehouse case. That is the case that Klein stated he helped Leeson on. Klein told me that during the year 1935 or 1936, he operated the "Bookie" on Grand River as a partner. I do not recall him ever telling me that he was not operating the "Bookie" for part of the years 1935 and 1936. I do not believe he did. He may have told me what time the "Bookie" opened up in the day time. I never went any further into detail with Mr. Klein relative to his relationship with Clarence Dracka and Hank Skampo than is included in the statement. I took the original statements from Dracka and Skampo in reference to this case. I would say that the statement from Skampo was taken in the month of October, 1939, though it may have been in September. Dracka's statement was taken the same day.

Q. Did you know that King,—strike that. Did you know at the time you took this statement from Dracka that King had secured a job at Ford's for Dracka?

A. He did not.

Q. You heard him testify to that on the stand here, didn't you?

The Court: Who?

Mr. May: Dracka.

Q. And that King got him a job at Ford's?

A. No, sir.

Q. You didn't hear that?

A. That King got him a job?

Q. That King got him a job at Ford's?

A. That is possible, that King did.

[fol. 392] Q. I am not asking you that, if it is possible, did you hear him testify to that?

A. I believe he did.

Mr. Hopping: May I inquire if your question is: That Dracka testified that King got him a job at Ford's, or that he had gotten him a job at Ford's before he was questioned by Mr. Hinton.

Mr. May: Both the same thing, it does not make any difference.

Mr. Hopping: I think there is a difference; I think it should be cleared up.

The Court: He is inquiring whether he got him a job.

Mr. Hopping: I don't quite understand what he means by his question.

Q. At the time you took a statement from Clarence Dracka, did you know that King had gotten Dracka a job at Ford's?

A. I know that King had not gotten a job; he was not at Ford's.

Q. Where was he?

A. He was up at Northern Michigan.

Q. Was he working up there?

A. At his father's farm.

Q. And prior to that, had he been working at Ford's?

A. No, sir, he had not.

Q. It was after you took the statement that he got a job at Ford's?

A. Yes, considerably afterwards.

Q. Did you have anything to do with his getting a job at Ford's?

A. I didn't know that anybody got any, no, sir.

Q. You knew at the time that you took the statement from him that he had gotten a job at Ford's through Mr. King, didn't you?

A. He was not working at Ford's when I took a statement from him. He was at his father's farm up at Traverse Bay.

Q. How long after was it—strike that. How long after you took this statement from Dracka was it when he went to work at Ford's?

A. I could not tell you that, I don't know.

[fol. 393] I did not help any of them get jobs. I did not promise Dracka anything for giving a statement. I never have helped him out in any way. I did not arrest Skampo or Dracka in this case.

After the indictment was returned, they were taken into custody by the marshal. I heard here they were released on personal bond. I had nothing to do on that part of it. I was working on the Detroit part of the investigation at that time. I did not know about Fidler's connection at that time. I first learned of his connection since the first of January, 1940. He has not been placed under arrest in connection with this case. I know from what he told me that he transported some of the alcohol from the dock. I was not there at the time of the seizure. I know what he testified to from the witness stand. I never talked to the police officers that arrested him.

The correct name of the Martin, who has been spoken of in the statement is Calbaza. I believe he is at the present time serving a sentence in Milan, Michigan. He has been in Lewisburg, Pennsylvania. He was sentenced for fourteen years for violating the liquor laws. His violation had to do with the stills that are mentioned in Harry Klein's statement. The ones Harry Klein says he is a partner of.

O'Brien, who is referred to in the statement, was a driver for Joe Martin and Harry Klein during the time they were operating a still on Livernois avenue, according to his statement and their statements. I mean according to Martin's statement and according to Bill O'Brien. O'Brien worked in the "Bookie" for Klein after Joe Martin was arrested in connection with the Livernois still and stood trial for it. During that period, Harry Klein fired O'Brien as doorman.

and he remained in the "Bookie" there according to his statement until around 1938. Klein did not tell me who told him to put Hoban to work in the "Bookie." He did not tell me that King told him to give Hoban the job.

Leeson was a wire tap man for our department, that is, he made hook-ups on telephone private lines to intercept conversations. The portion of the statement, in which Klein said that he had been told by Leeson that he was a [fol. 394] wire technician, and the paragraph of which that is a part, was dictated by me after Klein had told me what was included in the paragraph. It is my phraseology, but his ideas. I started to type up the statement immediately after the information was given to me. I started to type it up at the end of the first day. I did not read it back to him until it was finished. I do not recall how many days after I took the statement from him I read it back to him. Part of the information contained in the statement was received one day, and the rest another. All of the information in the statement was received within a period of two days. I do not know whether there is any other statement, written or oral, given by Klein to our department. I told him that he did not have to make a statement, and that it would be used against him in a court of law. He gave me the statement.

Cross-examination.

By Mr. Dougherty:

At the time this statement was taken from Mr. Wainer, we were all sitting around in my office. You (Mr. Dougherty) and some other agents were there. It got late in the evening and we hurried things along to get out.

With reference to Mr. Wainer telling me that day about being sentenced to the Atlanta Penitentiary and being more definite about it than his statement shows today, my recollection is that you dictated a portion of that statement and I dictated some of it. Mr. Wainer did say that in the month of July, 1936, he was tried in Peoria for conspiracy to violate the liquor laws. This was told prior to the time we started to take the statement. That was while we were sitting around. As to whether he said he was convicted and sentenced to serve two years in prison and pay a Ten Thousand Dollar fine, I only recollect that there was a sen-

tence mentioned, but I do not recall exactly what it was. As to whether he said that after that there was another indictment for conspiracy charging violation of the Internal Revenue Laws regarding the sale of alcohol at Chicago, I do not recall. The only one I recall definitely talking about was his arrest and conviction in connection with the still in [fol. 395] the neighborhood of Peoria, Illinois. I did not know whether the still was in Peoria or near Chicago. It is probably true that he told that he pled guilty before Judge Wilkerson and was sentenced to two years and six months. It is true that he told me he went to the Atlanta Penitentiary and served his term, was admitted on parole and served his parole.

Neither I nor anyone else at that time told the defendant Wainer that we were sorry we didn't know he had served that time before he was indicted up here, or he might not have been indicted, because we knew he had been arrested and convicted as well as that he had served his time. We had his record. I knew it. I do not remember anyone in the room making a statement to Wainer along that line, that is, concerning this indictment, after he had served his time in the Atlanta Penitentiary.

Re-direct examination.

By Mr. Hopping:

With reference to paragraph 41 of the Klein Statement, in which he referred to Joe Leeson as a wire technician, some of the words was my phraseology and some of it was Harry Klein's phraseology. Before the statement was taken I explained to Harry Klein that we wanted a statement from him. He was willing to answer questions. At first, we started to take the statement in question and answer form. I then went back and started over. I began with the time he first started in the alcohol business. I brought the statement up to date as he told me about something that had happened at one particular time. I would listen to him until he explained the point. I would then dictate the sentence or paragraph. He sometimes would break in and tell me that he wanted it changed. Other times he would tell me it was all right. I would then stop and he would explain something else. The statement was taken in this manner. I dictated the statement to a stenographer, who was present

at the time. The only information I dictated is that which was furnished me by Harry Klein.

[fol. 396] I have received information that Bob White is no longer working for the Federal Government. I was never in the place on Hartwell street in Detroit more than once. The Dave Fidler mentioned in Harry Klein's statement is the same Dave Fidler who testified in this case.

Re-cross-examination.

By Mr. May:

On the previous cross-examination you stated that Klein was in jail for seventeen days prior to his release on bond. I do not know how many days he was in custody. I could not tell you how many times he was brought over from the Wayne County Jail to my office. I ordered him brought over two or three times that I now recall. It could have been more than that. It could not have been five or ten times that I ordered him brought over. I know he was ordered brought over from the jail by others who were connected with my department, though I do not know how many times.

Re-direct examination.

By Mr. Hopping:

I was an agent of the Alcohol Tax Unit at the time of the seizure of the distillery in the Federal warehouse in Detroit. This distillery was not seized as a result of the information furnished by Harry Klein. The sugar used in the distillery was followed from Cleveland by our investigators, to Detroit, and then Special Investigator Ramstein, Special Investigator Lancaster, and Special Investigator Carr, watched the sugar being transferred from the truck that brought it from Cleveland, into a big moving van. The van was followed to the distillery. The distillery was seized at the Federal warehouse after that.

Re-cross-examination.

By Mr. May:

I know that Mr. Klein told me in his statement that he told Mr. Leeson about the still in the Federal warehouse.

[fol. 397] He also said in the statement that Leeson told him he had some wires tapped on some sugar in Cleveland in reference to it. He also stated to me that after he was arrested in connection with the Federal warehouse still, White told him that he knew he had nothing to do with it.

KOVACS, JOSEPH, a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ray:

I live at 26672 John Hawk Road, Garden City, Michigan. I am employed by the Roadway Transit Company, and have been there since the Fall of 1934. I identify Government's Exhibit 20 by my name where I collected the money on April 28, 1937. The exhibit relates to boxes of rug cleaning fluid delivered to the Star Products, 3454 Mack avenue on that date. I picked the merchandise up at our dock on Milford street, where we were located at that time. I delivered it to 3454 Mack avenue.

I collected my money before delivering the goods. Either the girl behind the cashier's cage would pay me, or some gentleman who would happen to be behind the cage would pay me. Sometimes they would send me with a man over on Beaufait street. Sometimes there would be a man over there and I would just drive over and deliver it.

I identify Government's Exhibit 38 by my signature which shows I collected \$7.63 for six boxes of rug cleaning fluid on February 15, 1937. I delivered it to Mack Avenue Storage Company, and from there took it to the storage house on Beaufait. There were six boxes in this shipment and the consignee was Star Products Company in care of Mack Avenue Storage. Either the cashier paid me or a gentleman who was behind the cage. I do not remember which.

I identify Government's Exhibit 186 by my signature. I collected \$8.55 on January 6, 1938, for a delivery of six boxes to the Star Products in care of E. J. Johnson, 6011 [fol. 398] 12th street. The Rug Life, Inc., was the consignor. Star Products in care of J. E. Johnson was the

consignee. Jesse Johnson receipted for them and paid the freight.

Government's Exhibit 161 was receipted for by Mr. Johnson. I delivered to that cartage company two or three times. I saw him a couple of times. I made other deliveries besides those. The procedure was the same. I would back the truck up to the door, bring the skid out. There were always one or two men around there and they would catch the boxes as they came down the skid and wheel it over to the wall and leave it there. Sometimes there was a small stake truck onto which they put two or three boxes. Other times they would just take the boxes off and leave them on the floor. I made practically all of the deliveries Roadway Transit had in the City of Detroit. I do not know how many. I drove a Roadway Transit truck. I did not handle any shipments outside of the city. I did handle several shipments from Rug Life on a truck I drove from Chicago to the Roadway Transit dock in Detroit. There were several such shipments.

Cross-examination.

By Mr. Cavanagh:

On the shipments that I delivered to the Beaufait Street Storage place, either a man was sent with me there from the Mack avenue address, or there would be a man there. When he went with me from the Mack avenue address, the man would ride in the truck with me. I would back my truck to the door, bring the skid out. They would wheel it on a two-wheel truck out of my sight. I took it for granted that the man who went with me was an employee of the warehouse. I never took him back to Mack avenue after delivering the shipment to Beaufait. It was not very many times that there was a man at the Beaufait street address. Most of the times, a man rode over with me. Whenever there was a man at the Beaufait street address, he would assist in unloading my truck. Both at the Beaufait address and at Jesse Johnson's, the man at the warehouse took care of the boxes after it reached the rear end of my truck.

[fol. 399] I saw Mr. Johnson at the Mack Avenue Storage on at least two occasions. He did not help me unload the truck. There were other men around the warehouse. I

never noticed anything unusual about these shipments. I never hauled any leakers.

SLESUR, STANLEY, a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hopping:

I am a defendant in this case and have entered a plea of guilty. I am now serving a sentence. In 1937, I was in the alcohol business in Chicago. I had a still in Racine, Wisconsin. It was right in the middle of town. It was in a factory building, but I do not know the name of it. I started in November, 1936. In January, 1937, the Federal agents raided it. I did the work at the still myself.

Government's Exhibits 98 and 99 are pictures of my truck. I used it in hauling back and forth from the still. The back of the picture is the factory building where the still was located. I had a driver on the truck, who had the nickname "Speedy," also Tony Rouba, who I saw in the court room.

On occasions I followed the truck myself. I hauled the sugar and alcohol on the truck. I got sugar in Chicago and took it to the still in Racine. I brought alcohol back to Chicago. I got the truck from a Mr. Steffus on Ashland avenue. I made the arrangements myself. When the truck was ready, I took a driver with me who drove it out. On the occasions that I followed the truck, I was alone. On these occasions, "Speedy" drove it mostly.

The alcohol that was produced in the distillery was brought to Rockwell street. The cross street was 47 Western avenue. I do not know where it went from there. I was in partners with one of the fellows that bought the alcohol produced in the distillery. That was Al Johnson. I do not know who the fellows were that bought it from [fol. 400] Johnson. He did the selling. The distillery was not licensed, nor did the cans of alcohol have any Federal tax stamps on them. I did not give any bond to the Government for the operation of the distillery, nor was it registered with the Supervisor of the Alcohol Tax Unit in

that district. I do not now own the truck. I lost it when they raided the place in March, 1937. It was seized by the Government. The time the still was seized there was mash, sugar and alcohol.

Cross-examination.

By Mr. May:

Racine is about sixty miles from Chicago. The still was in the center of town. I never did any business with Clarence Dracka. I never sold him anything, and I don't know the name. I do not know a man by the name of Skampo. I do not recognize the pictures which are Defense Exhibits 1 and 2.

The still was in Racine not quite three months. I could not say how large it was. I produced about one hundred cans a day. We ran exactly five weeks.

Cross-examination.

By Mr. Frederick:

I am now serving in Leavenworth Penitentiary. My home is in Willow Springs, Illinois. I never lived in Racine. I was there during the time I operated the still. I am serving a sentence not on this indictment, but from Chicago and Indianapolis for the same charge. I entered a plea of guilty here about two weeks ago. The sentence which I am now serving was in Chicago last year. I got four years to run with five. It was for stills which were in Spring Row and Racine.

I am defendant in this case and have entered a plea of guilty here. I have not yet been sentenced on this. I have not been arrested and convicted at any other time.

I operated stills all together for three months. I helped on others, but I mean on my own still. I did testify on direct examination that I started to build up this still in [fol. 401] Racine in November, 1936. I had a still before that, but it lasted only two weeks. I was convicted of that. It was that which I plead guilty to in Chicago.

During the time I was in Racine, from November, 1936, to January, 1937, I had two drivers working for me. Their names were Speedy and Tony Rouba. Tony Rouba worked for me around three months. No one else worked in the

still. I worked for myself. The drivers helped load the sugar and I worked. I had my own money to open that still. Johnson put up half of the money. We agreed to open the still together. There was no one else present. Opening a still is secret. Just Johnson and I agreed to open the still.

During the time I operated the still, I saw Johnson once or twice a week, whenever he got a customer. When we opened the still, I did not ask him where the merchandise was going to be sold. I knew it was sold in Chicago, though I did not know to whom it was to be sold. Johnson never told me, nor did I ever ask him, as to whom the alcohol was to be delivered. Johnson gave the orders to Rouba and to Speedy as to where to deliver it. The garage on Rockwell street, where the alcohol was delivered in Chicago, used to be my home. I lived there and moved to Willow Springs. At the time the alcohol was delivered, nobody lived there. It was a private garage. I rent the garage.

I was never before in business with Al Johnson. I never saw Mr. Braverman, the defendant here. I never had any business dealings with him.

With reference to this case, I was arrested about six months later than January, 1937. I was released on bond and I was sentenced April 4, 1939. I was at liberty from January, 1937, to April, 1939. During that time I worked in a butcher shop.

Re-direct examination.

By Mr. Hopping:

I was producing alcohol in the Racine distillery on March 2nd or 3rd of 1937. I never got a permit from the Federal Government to remove any of the alcohol from the distillery.

[fol. 402] STOKES, EDWIN, a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hopping:

I am employed at the Mack Avenue Storage Company, and have been there about nine years. I work in the

warehouse. There are three warehouses. My headquarters are at 3454 Mack avenue. I work in and out of the others.

I recall receiving some shipments at the Beaufait warehouse in the name of Rug Life, Chicago, consignor, and Star Products, consignee. I guess those shipments came in 1936.

Exhibits 14, 15, 16, 57, 56, 50, 44, 42, 36, 33, 31, 30, 29, 24, 23 and 19 do not have my signature. Exhibits 55, 54, 33, 52, 51, 49, 48, 47, 46, 45, 43, 41, 40, 39, 37, 35, 34, 32, 28, 27, 26A, 26, 25, 22, 21, 18, 17 and 38 all have my signatures.

Exhibit 20 is mine, but that's different.

I do not recall when these shipments first started coming in. I know how I handled them. I used to meet the man over at the warehouse, give him a skid plank and we slid them down the skid plank. I met him at Beaufait warehouse. They came in by Roadway Transit truck. After they were taken off the truck, they were put where it was most convenient. Sometimes there was furniture on the floor. On those occasions, we had to put them back further. Otherwise they were put not far from the door. After this was done, this man used to come and get them.

Defendant's Exhibit 2 is a picture of the man who came to get them. A lot of the times he came, I was working over there. If not, I went over from the Mack avenue office and let him in. He got what he wanted and I locked the door and came back. Sometimes I used to open the boxes so he would not get nails all over the floor. They are boxes like Exhibit 73. As near as I could see, there [fol. 403] were cardboard cartons inside the boxes. The man put the cartons in his car. The wooden boxes were left there. The man never opened the cartons while I was there.

It is nearly two or two and a half years ago, that I saw the man whose pictures I have identified. There was nothing particular about that occasion. He just stopped coming there. I never talked with him about the business he was in. I did not move the boxes around in the warehouse between his visits. He did not have any particular space rented. I never received any money from him for anything.

I do not know whether all of these exhibits, which have been shown me, cover all of the shipments received or not.

I recall nothing else that happened in connection with the receipt of these shipments.

Cross-examination.

By Mr. Cavanagh:

I have been employed at the Mack Avenue Storage for nine years. I pack furniture, take furniture to other warehouses, pack dishes out on jobs, and do several different things. I do pretty nearly everything that is to be done.

I have never had occasion to handle a commercial account before this one. The Mack Avenue Storage Company never had any commercial accounts that I know of. During the nine years I have been there, there has never been any other account of this nature.

The Mack Avenue Storage principally stores furniture, though we have transient storage of other things. We store barrels, parts for cars, chemical compound. The chemical compound was either gum or paste, not liquid.

We haven't ever had any merchandise brought in there in cases. There was nothing suspicious or individual about these boxes. I was never told by my superiors what this account was. I got directions direct to the warehouse on occasion of these deliveries from the head-office. There are five people that work in the office. I have identified my signature on approximately thirty of these shipping orders. [fol. 404] I at no time rode over to the Beaufait warehouse with the Roadway Transit man. I was at the Beaufait warehouse when the Roadway Transit man arrived on the occasions when I signed.

I have made special trips over to the warehouse to let the Roadway man make deliveries. The exhibits that have my signature are the ones when I have either been at the warehouse or went over there. I was not at that warehouse all of the time, I made special trips over to the Beaufait warehouse a half dozen times or so.

I did not know anyone connected with the Star Products Company. I was never told what they were. I never had any conversation with Mr. Skampo who is the man I have identified. I helped him remove nails from the boxes several times. I was present sometimes when the contents were removed. Other times I would be working upstairs. I never helped Mr. Skampo load the merchandise in the car.

Mr. Skampo was the only one who removed any of that merchandise from the warehouse. The only equipment Mr. Skampo had when he took the merchandise from the warehouse was a Ford coupe. He drove the car just by the door. The merchandise would be just inside the door. That is where I would put it every time it came in. He came in shortly after the Roadway dropped it off. He did not have any special room there. There were no other tenants around him. He came into the warehouse nearly every other day.

I have been called from the Mack avenue place to let him into the Beaufait warehouse several times. I could not say how many times, because I work over there a lot. I would go over for the sole purpose of allowing Mr. Skampo to get his merchandise out. Sometimes I would stand and watch him. Other times I would be upstairs. I never saw any leakers there. When he left, there was a box that had something in it remaining. I never found out what it had in it. I reported it to the office. This box eventually leaked. It sat there a year and a half. The metal rusted through on it.

I believe the Spring of 1937 was the last time the Star Products account was active in our warehouse. I think it was in May. It was about a year or so ago I guess. I re-[fol. 405] ported this merchandise. I did not smell anything from the leakage. I think there were four cans in the box. I do not know how many leaked. All the cartons turned black. There was no odor from it. Two fellows, Mr. King was one of them, came over and got the box. I do not know when that was. They were men from the Alcohol Tax Unit. This was last Summer or Fall. They took the whole box.

Mr. Gleiser was not present at the time. They called me from the main office and told me they were coming over. It was some time ago I reported the box to Mr. Gleiser. They threw out a couple of them. It run on the floor. Only the box containing the four cans was left in the warehouse. There were no tools left there. The nail puller was mine. He did not have any tools at any time. The only thing the Star Products had there were the boxes.

I do not recall how many accounts we had at the Beaufait warehouse during this time. It is a long time ago to remember. We had a warehouse full of furniture. I do not know how many accounts. Sometimes I was at the Beaufait warehouse every day. During the period covered by this account, I would be over there every week; sometimes two

or three times a week. I did not always stay all day. Sometimes I would be there eight hours, other days only four.

I do boxing and crating over there. I do not make up bills of lading there. I help load and unload merchandise. I am not a defendant. I was never arrested in connection with this case. I was never arrested before at any time.

Redirect examination.

By Mr. Hopping:

I think I testified in the Grand Jury. Government's Exhibit 215 bears my signature. I signed it at the time I appeared before the Grand Jury. I am the same Edwin Stokes who is named as a co-conspirator in this indictment.

[fol. 406] Cross-examination.

By Mr. May:

I never talked to any agents in the Alcohol Tax Unit about this case. I never saw any at the warehouse. I reported the only box that leaked to my boss. I never paid any attention to what the boxes contained.

There were no tools left, because he never had any of his own. I have tools, because I have to use a nail puller. I used to loan him my nail puller part of the time.

I never smelled anything from these cans. The outside marking was Rug Life Company, Star Products. I never asked Skampo what business he was in, nor did I have any conversations with him. Nobody in the warehouse, except myself, assisted him.

I am an all-around man in the warehouse. It was a long time ago, about a year or so, that I saw this leaker. I do not know if Skampo was behind in his rent. I did not keep the books. When I reported it to Mr. Gleiser, he told me to throw it out. I could not say whether he got in touch with the Alcohol Tax Unit.

Cross-examination.

By Mr. Cavanagh:

I think the account was first entered in the warehouse in the latter part of 1936. I believe it operated six months. During the time they operated, my activities did not become any greater. To my knowledge, there was no increase in

the charge for labor from the time they first went there until they left. I did not perform any more services from the time they went in there until they left. After this account was closed, we had all those boxes. We used them. They were given to us by Mr. Wilson. That was the name he went by over there. I do not know that we paid anything for them. I do not know if there was any understanding between the office or myself and Mr. Wilson about them.

(Government's Exhibit 215 was admitted in evidence.)

Defendants' Exhibit 2 was stipulated as being a photograph of the defendant, Henry Skampo.

[fol. 407] SHORT, EARL, a witness called by and on behalf of the Government, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Cross-examination.

By Mr. Cavanagh:

I am the same Mr. Short, who testified previously. I am dispatcher of the Cleveland Roadway Branch.

I once found a leaker of this rug cleaning fluid. This was the latter part of April or the first part of May, 1939. I still thought it was cleaning fluid. I smelled alcohol. The only report that was made by me was to Mr. Carbaugh. I told him if he would tell us where it was going, we would send a claim agent over so they could make a claim on it. No claim was ever made. The rates for the shipments of this merchandise from Chicago to Cleveland was always under the same classification. There was no change in it.

HERDRICH, ALONZO W., called as a witness by and on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hopping:

I am an investigator for the Alcohol Tax Unit of the Federal Government, and have been so employed for the past nine years. My post of duty is Chicago, Illinois.

I have visited the south side unit of the Empire Warehouse in connection with this case. The first time I went there was on July 20, 1939. On that day, I went to the main office located on Cottage Grove avenue first. I there saw Mr. Barrett, the defendant here on trial. At that time I was accompanied by Agent King and, I believe, Mr. Carlin, both of whom were special agents of the Alcohol Tax Unit. Upon arrival at Mr. Barrett's office, he knew who we were, inas- [fol. 408] much as Mr. King had previously been there. We asked permission to go through the room in the Lake Park Warehouse and for any records that he might have regarding the activities of Rug Life, Inc. in the other warehouse. The room we referred to was 549.

In response, Mr. Barrett produced some documents of the activities of that room, and called the Lake Park unit by phone and told them to allow us to go through the room. At that time, the records Mr. Barrett produced were a lease for the room dated, I believe, January 5, 1938, and signed by Don Nelson. There were also shipping tickets, bills of lading and records which they called scrip sheets. These were obtained for Mr. Barrett from his secretary. They were in a folder.

I identify Government's Exhibits 216, 216A, 217, 218, 218A, and 219. I first saw these in Mr. Barrett's office as part of the records he there produced.

(Government's Exhibits 216, 216A, 217, 218, 218A and 219 were thereupon admitted in evidence.)

Government's Exhibits 220 and 220A are identified by me as papers that were turned over to Mr. King and myself about a week or so later than July 20, 1939. We received these also in Mr. Barrett's office on Cottage Grove avenue.

(Government's Exhibits 220 and 220A were thereupon admitted in evidence.)

Government's Exhibit 221, consisting of sixty-two sheets of paper, was turned over to Mr. King and myself by Mr. Barrett on the occasion of about July 20, 1939 in his office. These were turned over to us on the same occasion as were the other exhibits which include 217:

(Thereupon, Government's Exhibit 221 was admitted into evidence.)

July 20th was approximately the correct date of the first occasion I talked with Mr. Barrett. We talked to him approximately an hour before we went to the Lake Park avenue warehouse. At that time, I recall, Mr. Barrett talking to me about a conversation he had upon a previous occasion with Mr. King and one of our investigators by the name of Carrier, when he, Mr. Barrett, became provoked because of [fol. 409] Carrier's whispering to Mr. King in his office. All I recall Mr. Barrett saying to us upon that occasion was that the first knowledge he had of Rug Life coming into the office was from some papers that are here presented. That is the lease and payment of the first month's rent. At the present time, I do not recall any other conversation.

He told me he was general manager of the warehouse, though I do not recall the exact number of years. He had been connected with the warehouse, I believe, fifteen years or more, and I think something like eight years as general manager. When Mr. Barrett told me that his first knowledge of the Rug Life was from certain leases and records, he did indicate some of the records which were the source of this information. The papers he indicated as having first brought the business to his attention were Exhibits 216 and 216A.

Mr. Hopping: At this time, I ask permission to read Exhibits 216, and 216-A. (Reading):

• "Printed form No. 50," headed, "Rate sheet." Written word at the top, "Empire" on the line; printed with the heading, "Name"; written in pencil, "Rug Life Incorporated, Lot No. 16129, date, January 5, 1938." On the printed space opposite the entry, "Room storage, 1 $\frac{3}{4}$ cubic feet, multiples of 40 cubic feet" on the second line under the heading "Rate," in the third column, under the heading "Location," written in, "Room 549"; in the right-hand column under the heading "Charge," written in the figures "\$35.00."

Exhibit No. 216-A, (reading): In a printed form headed: "Warehouseman's Script, Original Entry Date January 5, 1938, Lot No. 16129, Storage Rate, \$35.00, Name, Rug Life, Incorporated." The next line, "Goods," printed, and following that written in, "Brought in," and in the space below, written in, "Room 549."

I also recall that Mr. Barrett stated in my presence that the Empire Warehouse did quite a bit of hauling for Rug

Life. That they hauled boxed material from their warehouse to the Roadway Transit Company, and that their trucks picked up materials such as boxes and so forth for [fol. 410] the company. I do not recall that he explained what kind of a record Exhibit 216 was, or what its purpose in the Empire Warehouse was, other than that it was a part of their bookkeeping system and part of their records of the transactions with customers and clients of the warehouse.

Q. Now, I would like to read Exhibit 228, and 228-A. (Reading): Printed form, "No. 50," heading written in, "Empire," and the words, "Value, \$25.00, per D. T. C.," initials. Name, "Rug Life Incorporated, Lot No. 15896, date, November 18, 1936, Room Storage, Room 549, 1,000 cubic feet, \$35.00 per month."

Exhibit 228-A, "Warehouseman's Scrip, Lot No. 15896, Name, Rug Life, Incorporated, goods brought in, listed by Stevens." Entry in the middle of the form, "Party using entire room for cans rug cleaning fluid." The date is "November 18, 1936."

Exhibits No. 220, typewritten sheet dated—this is a carbon copy: "May 15, 1936." The name typed at the upper left-hand corner, "J. Rosen." Next typing is, "Emp. 15757, April 24/36, Rental room to May 24th, \$35.00, by cash, \$10.00, \$25.00."

Exhibit 220-A, "Warehouseman's Scrip, Lot No. 15757, April 24, 1936, Stored in Room No. 549, Name, J. Rosen, Goods from," written in, "Brought in, Listed by Stevens." In the middle of the form in writing, "This party using room for boxes of germicides."

Exhibit No. 219, a carbon copy filled out on the printed form of the National Box Company, "Receipt No. 20800, Order No. 02"—pardon me, "07229, Date, 4-18-39, F.O.B. Our plant, Sold to Fox Picture Frame Company, address, Gary Indiana, Quantity 26, Number,"—appears to be "Sp" and a line $29\frac{1}{2} \times 19\frac{3}{4} \times 14\frac{1}{2}$," and some other writing which appears to be, "Box, price \$103.00," at the bottom on a printed line, "Truck No." written in carbon or pencil writing, "Their." Stamped in red, also, "C. O. D.," and written across that stamp in pencil, "For Rug Life," and the stamp on the right-hand lower corner, "National Box Company, Chicago, paid 4-18-39," and initialed.

[fol. 411] Exhibit 217, two sheets written in carbon paper, on the printed heading, identical forms of the Roadway Transit Company bill of lading, says at the top, "Received," and so forth, "From Rug Life, Incorporated, May 2, 1939, at Chicago, Illinois, consigned to Goddard Products, care of Carbaugh & Son, Destination, Will Call, Cleveland, Ohio, Ten boxes, Rug Cleaning Fluid, Weight, 2500." The stamp on each sheet: "May 1939, received, Roadway Transit Company, Chicago, subject to inspection."

I do not believe that Mr. Barrett attempted to explain Exhibit 219, which is a carbon copy of a receipt of the National Box Company, other than to state that their trucks at times picked up boxes for the Rug Life from the National Box Company. There was a similar piece of paper to this from the National Box Company that had written on it, "See Don Nelson," driver, "See Don Nelson at the warehouse before you pick up these boxes." The paper I refer to is a part of Exhibit 221. It is dated January 11, 1938. At the bottom it says, "See Don Nelson." There was a similar piece of paper from the National Box Company with a similar notation on it, that is, to see Don Nelson at the Box Company.

I have seen Government's Exhibits 107 to 125A before. The paper I speak of is not among them. I believe Government's Exhibits 107A to 125A are part of the papers furnished by Mr. Barrett at the time we were there. Government's Exhibits 107 to 125 are the originals from the National Box Company. Exhibits 107A to 125A are carbon copies. Exhibit 219 is likewise a carbon copy on a similar form of the National Box Company.

I saw more of the National Box Company receipts, than are contained in Exhibit 219 while I was in Mr. Barrett's office. I recall that at the time we were talking to Mr. Barrett, Mr. King showed him freight bills from the Roadway Transit Company which were dated prior to January 5, 1938, which was the date, according to his record, that Rug Life had first come to the Empire Warehouse. These freight bills showed that Rug Life was shipping materials from the Empire Warehouse over the Roadway Transit [fol. 412] Company before January 5th, and when Mr. Barrett was asked how he could explain it, he said, "I cannot explain that, I don't know."

After Mr. Barrett had told us that the first he knew of Rug Life was the date shown on Exhibit 216, which showed the rental of Room 549 beginning January 5, 1938, Mr. King showed him the tickets of the Roadway Transit wherein shipments had been made before that date. At that time, Mr. Barrett had no record of any prior use of the warehouse by Rug Life.

A week or so later, we again went to Mr. Barrett's office and inquired if there was any records pertaining to Rug Life prior to January 5, 1938. He said, "No," and we thereupon asked if it was possible for him to show what had occupied Room 549 prior to that date. He explained that it would be a long drawn out process, because of the book-keeping system, and said if we would come back in a couple of days he would make a search. A couple of days later we returned. He had found a folder for J. Rosen. There was little in that folder. It did show that a J. Rosen had occupied the room sometime prior to January 5, 1938. He produced Exhibit 220 and Exhibits 220A from the J. E. Rosen file. That is a record of the Empire Warehouse in the name of J. Rosen and dated May 15, 1936.

Exhibits 218 and 218A, a record of the rental of Room 549 in the name Rug Life, dated November 18, 1936, evidently came from the Rug Life folder he produced the first time we were there. There was only one Rug Life folder. Mr. Barrett must have produced Exhibit 218, dated November 18, 1936, at the time King showed him the Roadway delivery tickets prior to January 5, 1938, because there was but one Rug Life folder there, and he produced all of the Rug Life records he possessed at the one time. I do not recall any records Mr. King showed Mr. Barrett from the Roadway which were dated earlier than November 18, 1936, though it is possible he did so. I had not been in Room 549 of the Empire Warehouse prior to talking to Mr. Barrett on July 20, 1939. No Federal officer had been there prior to that date.

[fol. 413] Mr. Barrett told us that Mr. King had talked to him before this date and told him that Rug Life, Inc., one of these defendants in 5041 Lake Park avenue, was shipping alcohol from that room. Also, King had told him that the warehouse was to be kept under observation and that it had been under observation from approximately the first of June until we entered it, July 20, 1939. The first

time any Federal agent was in Room 549 was either July 19th or 20th, 1939. I am not positive which day it actually was.

In our conversation with Mr. Barrett, King said that he had asked for permission to go up into the room and had told Barrett they were handling alcohol there, and that Barrett had replied that he could not grant permission to go into the room, because he must protect the interest of his tenants. Barrett also said that frequently credit companies, who had claims against tenants, come to him with requests to go in and see what was possessed in certain rooms of the warehouse. He also stated that it was necessary to protect the interests of his tenants. Rug Life was a tenant and he proposed to protect their interest. At that time Mr. King and I told him we were agents of the Federal government. We did not represent ourselves as representatives of a credit collection agency. After the conversation with Mr. Barrett, we went to the warehouse at 5041 Lake Park avenue, and saw Fred Stevens, the defendant here, who took us to Room 549. We first met Mr. Stevens in the general office of the Lake Park warehouse. At that time Mr. Carroll, who is in the court room, was present. Mr. King told Mr. Stevens that we were Federal agents, and the men whom Mr. Barrett had spoken about over the phone. I do not recall any other specific conversation; except that Mr. Stevens said he would take us to Room 549. I do not believe Mr. Carroll went along.

Mr. King, Mr. Carlin, Mr. Stevens, and myself, then went to the fifth floor and entered room 549. On the fifth floor there was a long passageway, with steel doors in the wall. There were numbers on the doors. We went to the fifth floor on the passenger elevator, and after leaving the elevator, walked about fifteen feet north and thirty feet east. I later saw the freight elevator, which was about forty to fifty feet further east of Room 549.

We entered Room 549 and saw several boxes, a pile of cardboard cartons, steel binding, tools for applying the steel binding, certain stencils; cut stencils, an ink pot and brush for applying stencils. Government's Exhibit 73 is a box that was in the room at that time along with several other. Government's Exhibit 67 is a signode strapping

tool; and Exhibit 69 is a signode stretching tool. These were found in the room.

(Government's Exhibits 67, 69, and 73 were offered in evidence.)

Exhibits 70 and 71 are the ink pot and brush that were in the room. (These were offered in evidence.)

Exhibit 68 is a group of three stencils and Exhibit 68A a "Goddard Product stencil, in care of John Carbaugh," were in the room. (Exhibits 68 and 68A were received in evidence.)

Government's Exhibit 72 are signode clips, which I found in the room. (Government's Exhibit 72 offered in evidence.)

Mr. Stevens stayed in the room while we were there. I recall Mr. Stevens telling us that the people had been there for some time, and that they had shipped materials out of there. He also told us that he had helped upon occasions bring material from the first floor to the fifth floor, and on some occasions helped a man known to him as Don Nelson to stencil some of the boxes that went out. He told us that the warehouse closed at five o'clock, and that Don Nelson had a habit of shipping out just about that time. He said that sometimes he would inquire of Nelson if he would be through by five, when it appeared that Nelson was a little behind in his work. He also said that at times he helped him stencil some of the boxes and make out bills of lading.

I later took a written statement from Mr. Stevens. I identify Government's Exhibit 222 as that statement. This was taken on August 1, 1939 in the Empire Warehouse on Lake Park avenue. Special Investigator King was present also.

[fol. 415] (Thereupon Government's Exhibit 222 was offered in evidence.)

On this same day that we first went to Room 549, we had the photographer and fingerprint expert of the Alcohol Tax Unit come to the room to look for fingerprints and to take photographs of the room and its contents. I was present when this was done. Government's Exhibit 58 is a picture of the exterior of the Empire Warehouse unit at 5041 Lake Park avenue. In the picture you can see the doorway, which is the opening into the warehouse from

Lake Park avenue. Government's Exhibit 101 is a picture of the corridor and the steel door leading into Room 549 of the Empire Warehouse. Exhibit 102 is a picture of the interior of Room 549. This picture was taken in my presence. The objects were arranged in the room for the purpose of taking the picture. Everything in this picture was in the room at the time we first entered. We seized the materials that were in the room. The boxes were all empty. There were also two or three empty five-gallon cans. They were square five-gallon Chicago short cans.

A few days after this, we again went to the main office of the Empire Warehouse to make further inquiries regarding the activities of Rug Life, or any other company that might be shipping alcohol. That is the occasion I mentioned as being about a week later. Mr. King and I at that time saw Mr. Barrett. I do not recall anything that happened upon this occasion, except that Mr. Barrett said he would search for any other occupants of the room. I do not recall that Mr. Barrett attempted to explain why Exhibit 217, which is a duplicate of the bill of lading of the Roadway Transit Company, was in the Rug Life file.

It was upon another occasion that I interviewed the drivers of the Empire Warehouse regarding delivery tickets which are Exhibit 221. I believe this was in the first week of August 1939, and I interviewed all of the drivers except one who had quit the company, or something of the kind. I questioned them relative to the "van removal orders" which is Exhibit 221. In general, when I showed them the van removal order, they would say if their name appeared on it that they made the delivery. Outside of that, I do not recall any of the circumstances. [fol. 416] I see Guy Anderson in the court room, and recognize him as one of the drivers I talked to at that time. He identified his signature on the van removal order, as did the driver Schwartz.

At the time I talked to the drivers, I either had Exhibits 107 to 125—107A to 125A, or notations which had been taken from them. The drivers identified their signatures on these sheets. Bernhart is the name of one of the drivers I interviewed and his signature appears on one of the slips in Exhibit 221, which is dated September 20, 1938. Schwartz' signature also appears on the top sheet of Exhibit 107A.

In respect to this case, I also interviewed Mr. Dracka and Mr. Skampo. I likewise participated in taking a statement from Mr. Barrett. Exhibit 223 is a statement taken from Mr. Barrett on August 1, 1939.

Mr. Hopping: I offer in evidence Exhibit No. 223.

The Court: You have offered Exhibit 222, statement of the defendant Stevens.

Mr. Hopping: Yes, sir.

Mr. Fischer: Other counsel have not had an opportunity to read it yet.

The Court: That was at least twenty minutes ago.

Mr. Hopping: I will ask permission to read portion of Exhibit 221 at this time. I understand there is an announcement of no objection to Exhibit 222.

Mr. Frederick: No objection.

The Court: All right, it may be received.

Mr. Frederick: Of course, I understand that the jury is instructed.

The Court: The same rule applied, that any statement made by the one who is making the statement, does not in any way bind any of the other defendants in this case. I assume this statement was made during the time of this investigation.

Mr. Hopping: Made August 1, 1939.

The Court: Which is subsequent to the termination, at least, of the conspiracies charged in these indictments.

Mr. Hopping: Exhibit 223. (Reading):

"I, James J. Barrett, being first duly sworn, depose and say:

[foi. 417] "That I reside at 10007 South Hoyne Street, Chicago, Illinois. I am employed by the Empire Storage Warehouses, and have been employed by them since 1924. For the past eight years, I have been secretary and general manager, my office being in the Empire Warehouse at 5153 Cottage Grove avenue, Chicago, Illinois.

"The first knowledge I had of Rug Life, Incorporated, being in our warehouse at 5041 Lake Park avenue, Chicago, was upon the signing of the lease for room numbered 549, on January 5, 1938. This lease was signed by Don Nelson, for Rug Life, Incorporated, and by D. E. Carroll, office manager of the Lake Park Warehouse.

"The terms of this lease were discontinued in April, 1938, and it is my understanding that following the can-

cellation of the original lease in April, 1938, the account was continued on a basis of a \$5.00 service charge each time a delivery was made to the warehouse, and each time a withdrawal was made from the warehouse, plus trucking charges to the terminal.

"To the best of my knowledge, I have never met any persons connected with or representing Rug Life Incorporated.

"I have never had any conversation with employees of the Lake Park Warehouse as to the activities of the Rug Life people, and I did not know they were handling alcohol." (Signed) "James J. Barrett; subscribed and sworn to before me this 1st day of August, A. D. 1939. Witnesses: Firmer King and Herdrich, Special Investigators."

Mr. Hopping: Exhibit 222. "I, Fred C. Stevens, being first duly sworn, depose and say:

That I reside at 6954 South Laflin street, Chicago, Illinois. I am employed by the Empire Storage Warehouses, and have been employed by them for the past twenty years. I have been employed as warehouse man in the warehouse at 5041 Lake Park avenue, Chicago, for the past five years.

Sometime during the year 1936, I received a call from the main office, regarding two men who were coming to the Lake Park warehouse to negotiate for the rental of [fol. 418] space. A short time later, Mr. Dan Carroll, Manager of the warehouse, called me, stating the men had arrived. I took the two men through the warehouse and showed them the rooms we had for rent. They chose room numbered 549 as the room they would like to rent.

Our regular price on a room of this type is \$17.00 per month, plus half that amount when the goods are brought in, plus half that amount again when the goods are removed from the warehouse. These charges are for the handling, storing and removing of the goods. As these men had explained to me that they would be bringing in materials and shipping out merchandise two or three times each week, I called Mr. Barrett, the General Manager, to ascertain how much should be charged for the room. It was decided to charge them \$35.00 per month for this kind of service. I quoted them this price and they rented room 549 under the name of Rug Life, Inc. One of these

men was known to me as Don Nelson. The other I knew only as Hank. During the renting of the room, Hank did most of the talking.

Shortly after they had rented the room, boxes were delivered to the warehouse for Rug Life, Inc. Later, full five-gallon cans in cardboard cartons were brought in. The cans were packed in the wooden boxes. The boxes were labelled from Rug Life, Inc. These boxes were then loaded onto the elevator, taken down to the loading dock where they were loaded onto a truck, and hauled away from the warehouse.

When the cans and other materials would be delivered to the warehouse, I would put them on the elevator and take them to the fifth floor. Sometimes I would put them into room 549; other times Nelson would put them in the room. Sometimes I would help Nelson put them in the room. When a shipment was ready to go out, I would put the boxes on the elevator and take them down to the loading dock where they would be loaded onto a truck and hauled from the warehouse.

I made some stencils for Nelson. I usually made out the bills of lading and stenciled the boxes of Rug Life being shipped out. On some days when a shipment was [fol. 419] going out and the cans would be brought in on the same day, I would take the cans on the elevator to the fifth floor, where I would unload them on the landing by the elevator. They would not be taken into the room, but would be packed in the boxes near the elevator. I would help Nelson pack the boxes, stencil them, make out the bills of lading and then place the boxes on the elevator and take them down to the loading dock.

This continued for about one year, Nelson doing most of the work. During this first year, I do not believe Hank was in the warehouse with Nelson more than ten times. I was under the impression that Nelson was handling the Rug Life business at the warehouse, while Hank was handling it when it reached its destination.

After about one year, Hank did not appear at the warehouse, but Nelson continued to handle the business alone in the same manner as before, until about April, 1938. Since that time, he has not been at the warehouse. After Nelson disappeared from the warehouse, there was a lapse of three or four weeks, during which time no one representing Rug Life, Inc. appeared at the warehouse. Then

two men came to the warehouse and stated they were taking over the Rug Life business.

One of them was called Al. He was about 35 or 40 years old, 6 feet tall, weighed about 200 pounds, had black hair and a dark complexion, and usually wore a dark suit. The other man was called Bill. He was about 45 years old, 5 feet, 8 inches tall, weight 180 pounds, was light complexioned and usually wore light colored clothes.

These men continued to rent the room 549 at the monthly rate, for three or four months. They then made arrangements with Dan Carroll whereby the monthly rent was discontinued and a holding charge of \$5.00 was charged to them every time they had a shipment going out of the warehouse, plus a \$5.00 delivery charge for six boxes, and \$.50 per box for each box over six boxes. The Empire trucks were to do the hauling. While this agreement was in effect, I usually collected the charges, sometimes from Al and sometimes from Bill.

[fol. 420] These two men continued to run the Rug Life business and I continued to handle the business for them, the same as I had for Nelson—taking the cans and packing materials to the room, assisting them in packing, stenciling boxes, making out bills of lading, and loading the boxes after they had been prepared for shipment onto the elevator and taking them down to the loading dock. The key to the room 549 was always kept at the warehouse in a place where the men could get it when they wanted to use the room.

During the period of time Nelson handled the Rug Life business, the cans were brought into the warehouse in various trucks and passenger cars. These cans at times were delivered to the warehouse in a red Dodge stake bodied truck, bearing no advertising; also in a red Dodge stake bodied truck which bore the sign, 'American Screw Works' or of 'American Screw Company.' At other times the cans were delivered in an old brown model A Ford panel truck. Cans were also delivered to the warehouse in a low steel bodied truck. When this truck was used, the cans were not in the cardboard jackets. I believe I would be able to identify some of these men if I should see them again. I believe that while Nelson handled this business, Charles Pacente took most of the shipments of Rug Life away from the warehouse, and that he delivered some of the empty boxes and packing material to the warehouse.

After Al and Bill had taken over the business, I believe Empire trucks made most of the deliveries away from the warehouse, and on some occasions delivered new boxes to the warehouse.

The cans were usually delivered to the warehouse in passenger cars, and the last twelve or fifteen times were always delivered by the same man. This man was about 35 years old, 6 feet tall, weight 200 pounds, was dark complexioned, and had a cauliflower ear, which I believe was the left ear. He was either an Italian or a Jew. I will be able to identify these men if I should see them again.

On several occasions during the entire period of time Rug Life was in the warehouse, cans would be delivered to the warehouse which were leaking. They always kept [fol. 421] empty can in the room, and when a leaking can would come in, they would transfer the contents into another can. When this happened, there was a terrible odor throughout the warehouse, which smelled like formaldehyde.

I thought it very unusual the way these men carried on this business, and thought they might be handling something other than cleaning fluid, but I never asked any of them what they were handling, and I was never told. I did not know it was alcohol.

On July 24, 1939, I was shown several pictures, two of which I have identified, one being a likeness of the man I knew as Don Nelson; the other a likeness of the man I knew as Hank. I have placed my initials in the upper left-hand corner of each. Signed, 'Fred C. Stevens.'

Subscribed and sworn to this 1st day of August, 1939,
Witness: Firmer King, Special Investigator; A. W. Herd-
rich, Special Investigator."

There was then read to the jury portions of the van removal orders, which was Exhibit 221, during the reading of which the following colloquy occurred between the court and counsel:

The Court: What do you mean "Call on Rug Life, Empire"? How is it written in there, a blank form, or what is it?

Mr. Hopping: It is printed on a form, Auto Van Removal Order. At the top is a printed line, "Starting time." a printed line, "Return time"; a printed line, "Call on," and a space—

The Court: What is written in "Call on"?

Mr. Hopping: "Rug Life" in writing.

The Court: All right.

Mr. Hopping: The next line is printed with the heading, "street" and in that is written "Empire, E-m-p-i-r-e."

The Court: What is the printing ahead of it?

Mr. Hopping: "Street." The next line is, "Deliver to"; and then under that is a line printed with the heading, "Street," and in that is "39th Street." The next line is printed "Goods," and a blank line under that. That is written "Nine boxes." Then there's a framework [fol. 422] printed in there for "first load, second load, arriving time, loading completed, hours, arriving time, unloading completed, hours and total hours." That space is blank, and on the right-hand side of the form is a framework printed with "Charges" at the top, and "Columns" and the footing, the word "Total," and in that space the amount \$7.00. Opposite that, on the left-hand side, is a printed line with the word "Driver" and written in there are the initials in writing, "G.A."

The Court: What do you interpret that to be?

Mr. Hopping: G. A.?

The Court: An order for somebody to take some where?

Mr. Hopping: Yes, your Honor.

The Court: By whom?

Mr. Hopping: An order by the main office of the Empire Warehouse to one of its drivers to go to the Empire Warehouse at 5041 Lake Park avenue, Chicago, pick up the goods described in this order, and deliver it to the Roadway dock at 39th and Wallace, which is 39th and Lowe, also.

The Court: And the charges?

Mr. Hopping: And the charge of \$7.00 for that delivery.

The Court: You have read it several times, "paid."

Paid by whom to whom?

Mr. Hopping: On those instances where I read, "paid," it shows, paid Lake Park, written out, paid, and in writing "L. P. for Lake Park."

The Court: That is the location of the Empire Warehouse—one of the Empire Warehouses?

Mr. Hopping: Yes, your Honor.

The Court: Well the way you were reading them it was a little difficult for me to understand just what you have been talking about.

Mr. Hopping: I haven't been reading the printed part of the form. I was reading what was written in.

The Court: Unless you do, and the jury understands what you are doing, it is just wasting your time.

Mr. Hopping: There are a few more, and I would like to read for the jury and into the record what this Exhibit shows, your Honor.

[fol. 423] Referring to Government's Exhibit 211, which is the statement given by the defendant Allen Wainer, the address 2355 West Madison, which is stated to be the location of a liquor store he managed, is on the south side of Madison avenue, near Western avenue. Exhibit 157, which is a record of the Signode Steel Strapping Company, has the address 19 South Western avenue as being the location of the Waukegan Chemical Company. This address must be just around the corner from the place on Madison street. In fact, I believe they would come close to joining in the back, that is, one on one street and one on the other. Western avenue runs north and south and Madison avenue runs East and West. 2355 Madison avenue, I should say, is on the south side of Madison and 19 South Western avenue would be on the east side of Western. These addresses would not be at the intersection of the streets, but there would be one or two buildings on Western avenue between Madison street and that address, and there would be one or two buildings between Western and this address on Madison. In April, 1936, Acme Can Company, run by Phil Bloom and Fred Bloom, was located at 19 South Western avenue. I do not know what was located at 2355 West Madison at that time.

Cross-examination.

By Mr. Cavanagh:

I believe it was June 1939 that Mr. King first talked to Mr. Bissett. At any time I went there I don't think any one was told to operate normally. At the time I went there on July 20th, there were no alcohol activities in the warehouse that we knew about. At various times I was watching the warehouse from the first of June until July 20th. These dates are approximate. During that time I did not know there was alcohol at 5041 Lake Park avenue, but I had been told there was. So far as I am concerned,

there was nothing unusual about the operations there during the time I had the warehouse under observation.

[fol. 424] At the time Mr. Barrett turned these records over to Mr. King and myself, he asked his secretary for them and she produced them from some file. As I recall it, he asked her to bring all of the records of Rug Life, Inc. There might have been two files in that account. That time Mr. Barrett handed the contents of these files over to us. I don't think there was any inspection of the files prior to the time he handed them over. None of the contents were removed in our presence; the complete contents were given to us. We did make inquiry concerning other files and Mr. Barrett may have asked us what name they might be in. I do not recall him doing that, but very likely he did. He also probably asked us if we have any identification that would aid him in locating other files. We did not tell him that there might be a file under the name of J. Rosen. The first I knew there was such a file was when Mr. Barrett turned it over to me. That was after he has caused an examination of all the records to be made. So far as I am concerned, Mr. Barrett cooperated with us in every way.

I was not present when Mr. Barrett suggested that Mr. King or some agent obtain a search warrant, though Mr. King told me of such a conversation. I believe Mr. Barrett did suggest that we get a search warrant or give him some authority to justify his conduct. I would not say that Mr. Barrett encouraged that the place be raided. He gave us permission to go into Room 549. This was either July 19th or 20th. The other exhibits relating to the trucks came from the files Mr. Barrett produced. I possibly was told how these exhibits were made up, but, if so, I do not remember it. They all seem to be made out in the same handwriting. Mr. Barrett may have told me that they were made out by the truck dispatcher. I talked to Mr. Barrett on many occasions and I do not recall verbatim just what he had to say about this bunch of papers. He did, however, say that they were all records of the Empire Warehouse.

In my conversation with the drivers, they did not tell me the source of the exhibits. I do not recall that I asked them where they received their instructions or orders. [fol. 425] I do not believe they told me that Mr. Pat Carroll gave them the exhibits.

The lease to which reference has been made was in the files on July 20th. I do not recall Mr. Barrett saying that that was the first time he had seen the lease. I do not believe he said that that occasion was the first time he had any information pertaining to the Rug Life account. He did say that the files were the only records he had in regard to Rug Life. I do not believe he said that the first information he had was from an inspection of the files at that time. I do not know just exactly what was said as to his first knowledge of the account being in the warehouse.

There was some mention made of the fact that since January 5th of that year, their company had been doing quite a bit of hauling and picking up of materials from the National Box Company, and that those exhibits were a part of the files. I believe he told us that they were turned in by the driver in the regular course of business. Mr. Barrett might have told us that that was the first time he had ever seen the contents of the files. He did tell us that all of these records were maintained in the regular course of business. He did not say just how they came by all of their records, or as to whether the bills of lading were attached to the van removal orders. We did not discuss each record separately.

During the time I had the warehouse under observation, that is, from June 1st to July 20th, 1939, I do not know how many shipments moved in and out of the Lake Park Warehouse. I never saw any shipments move in or out. I was not present at the time the conversation was had with Mr. Barrett relative to the obtaining of a search warrant. Later, I heard that he had asked that this be done.

I was not present at any time when there was a conversation relative to a raid. When I went with Mr. King to talk with Mr. Barrett, we asked permission to go to the room. This was granted. I do not recall Mr. King telling me that Barrett had previously suggested to him either that he obtain a search warrant or stage a raid, so as [fol. 426] to avoid involving the warehouse. Mr. Barrett called us and told us that he had located the Rosen account approximately a week after the first visit there. It was in response to his phone call, that Mr. King and I went out there, at which time he turned the file over to us. At that time it was suggested to Mr. Barrett that he search his

files for accounts under the different names used by the Rug Life, such as Merchants Chemical, Farquhar, Fox Picture Frame, or any other name that might have been used in connection with Room 549. He said he made such a search.

So far as I know, none of his records disclosed occupancy of that room by any of the people I have mentioned. I do not know whether Room 549 was ever occupied by any such tenants or not.

I interviewed the drivers at the garage on 47th and Cottage Grove. I do not know all of the drivers of the Empire Warehouse, but the ones that were on the list I read are the ones that made the deliveries. I believe I did talk to Mr. Pat Carroll, who was in charge of the garage. He came in the day I was waiting to talk to the drivers who came in one at a time. As they came in at the conclusion of their work, I stopped them and talked to them about the removal orders. I heard Pat Carroll was a truck dispatcher there. None of the drivers indicated to me any irregularity in connection with the delivery of these shipments.

The first that I talked to Mr. Stevens was on July 19th. I now recollect that it was the 19th that we first went to the warehouse and not the 20th of July. I did not personally have any conversation with Mr. Stevens at that time. There was just a general conversation. Mr. King was in charge, and I believe he talked to Mr. Carroll first, who then sent Mr. Stevens in.

Mr. Stevens went up to the room with us at that time. I believe he told us that the Empire Warehouse had a key to Room 549. I believe he said that it was a warehouse lock on the door and he had a master key to fit it. There was nothing unusual about the outside of this room. The Lake Park warehouse was, I believe, seven floors high, [fol. 427] about sixty feet wide and over two hundred feet long. I was only on the fifth floor. There were various other rooms on this floor. I do not recall any other activity on the floor while I was there.

I have visited the loading platform, and upon various occasions have noticed quite a bit of activity, other times none. The activity on the loading platform consisted in bringing in articles of household goods, loading it, checking, and preparing for shipment. Mr. Stevens supervised this activity. One time I saw a touring car in there.

It was a sedan. They took a baby bed out of it. I never saw any furs unloaded, though I did understand they had fur accounts there.

I talked about this particular account with Mr. Stevens on various occasions. He told me to look over his entire records and list of the tenants. I did so. I checked his list in what I would call the packing room, the back end of the warehouse. I saw some tools in that room, though I do not believe I saw any steel binding tools. I saw paint brushes and boxes of this kind. I did not see any banding iron, nor any signode fasteners. In the warehouse, I saw a machine for cutting stencils, a saw for sawing lumber to make crates, hammers, pliers, wrecking bars, twine, excelsior, paper and broad tables on which to pack. We had no subpoena at the time Mr. Barrett turned these papers and records over to us. He did it voluntarily.

I have met Mr. W. F. Carroll, who is the president of the Empire Warehouse. I do not know whether he is active about the warehouse or not. I discussed some phases of the matter with him. I went to the warehouse in December, after indictments had been issued for Mr. Barrett, for the purpose of serving a warrant. At the time, Mr. Carroll seemed to feel very badly and asked why I hadn't come to him when investigating this proposition in June. I informed him that there was no occasion to, and that other men had been investigating the case and conducting their business with Mr. Barrett. Mr. Carroll told me that he was the boss there.

This statement of Mr. Stevens was taken at the Hyde Park Hotel. Mr. King, Mr. Stevens and I were present and [fol. 428] Government Agent Carlin might have been there. I discussed this matter with Mr. Stevens before taking the statement. On none of these occasions had he indicated a knowledge of the contents of the merchandise. I do not think this was a question and answer statement. As I recall, we discussed each separate point. After Mr. Stevens had told his story, Mr. King would go ahead and write it out on the typewriter. I do not recall any particular conversation relative to the reference to formaldehyde and comparing it with the odor of this commodity. I do not recall Mr. Stevens telling me that during the war he had considerable experience with formaldehyde. Apparently, Mr. Stevens cooperated with me at all times. I do not

believe I recall making an appointment with Mr. Stevens to go to my office in Chicago for the purpose of making an identification. I recall that Bagdonas was picked up and brought to our office, but I do not recall that I was there at the time, or that I had an appointment to meet him on a certain morning.

Now that you mention it, I believe that I did call Mr. Stevens and tell him it would be unnecessary for him to come to my office, inasmuch as Bagdonas did not appear. Therefore, I did have an appointment with him. Stevens had made an arrangement to come down and I did call and cancel it.

Cross-examination.

By Mr. May:

I took a statement from Dracka. I was present when Skampo was questioned, but I do not believe that that statement was written down. Skampo was questioned about August 18, 1939, and Dracka the day before. Dracka was questioned first. I took a statement from him.

Q. Have you a copy of that statement here?

A. Yes, sir.

Mr. May: I would like to have the opportunity to examine that statement, if the Court please.

Mr. Hopping: I object to that, on the ground it has already been ruled on by the Court.

[fol. 429] Mr. May: I don't think we have had a ruling. I think it was held in abeyance.

The Court: I am waiting for you gentlemen to show me some authorities on it, that are binding on this Court. I haven't settled the question, however. You simply argued it. I concluded from something that was said, you wanted to investigate it further, to run down the federal cases.

I heard Dracka's testimony on the stand in this case. In most respects it was substantially the same as the statement he gave me. I did not take a statement from Skampo, and I only heard part of his testimony in this case. The portion I heard was substantially the same as the oral statement he gave me. Mr. King was present at the time I took the statement from Dracka. Dracka knew King, but I do not know for how long. I do not think

the subject of the length of the time they knew each other was mentioned. At the time the statement was taken from Dracka, I did not know that he had received or was promised a job by one of the agents of our office. There was some mention made of it. At that time, Dracka had been on parole since the early part of July. This was approximately the middle of August. We saw him at Kingsley, Michigan. His father has a farm there. Dracka said he was a tool maker, and that there were not many jobs for tool makers in the Western district of Michigan. He asked King if it would be possible to have him transferred to the Eastern District of Michigan. King told him that he did not know whether it would be possible or not, but said he would see his parole officer to ascertain if it could be done. There was no specific mention of a job, merely the fact that there were more jobs in the eastern district of Michigan than the western district. At that time it was generally supposed that he, Dracka, would be a defendant in this case. There was no mention made by either Mr. King or myself to the effect that Dracka should go back and tell Skampo the contents of the statement he had made, because at that time Skampo was in Toledo. As I understand the parole, it would be impossible for Dracka to leave the western district of Michigan to go [fol. 430] to talk to Skampo. It would have been a violation of his parole to do so, but whether he did or not, I do not know.

It was the following day that I talked to Skampo. I know Dracka had not talked to Skampo in the meantime. At least, I do not believe he did. I never saw Dracka after this occasion to ask him if he had mentioned the statement he gave us to Skampo. I did not ask Skampo whether he had talked to Dracka. I merely took it for granted that since they were four hundred miles apart, they had not talked together. The oral statement from Skampo was taken in Toledo.

I never interviewed a man by the name of Fidler in this case. My investigation was primarily in Chicago. At the time I talked to Skampo, he did not say he was going to plead guilty, though he admitted guilt to me. I do not think there was any mention made of the fact that he was going to be a witness in this case. At the time I talked to him, I told him that he had been identified as the man who had participated in leasing space in the

Empire Warehouse, as well as in shipments from there. There was no discussion between Skampo and me as to what part he would play in this case. I do not know what business Skampo was in at the time I talked to him.

He was around a cigar store. We went to his room to talk to him. At the time I talked to Dracka and Skampo, I did not tell them that I had specimens of bills of lading containing their handwriting.

Mr. Stevens identified the picture of Clarence Dracka to me as being the man he knew as Don Nelson. He identified a picture of Skampo as a man known to him only as Hank. I advised Dracka and Skampo that they had been identified.

[fol. 431] ANDERSON, GUY, a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hopping:

My home is Chicago, Illinois. I am a truck driver for the Empire Storage Company. My work is at 4714 Cottage Grove avenue, which is the garage of the Empire Warehouse and Storage Company. I have been so employed continuously since 1918. Pat Carroll is my immediate boss. His office is at 5051 Cottage Grove.

In June, 1939, the Empire Warehouse had eight to ten drivers. I knew all of them. Six of them had been employed there for twelve to twenty years. The other two were extra men. The extras were named, Johnson and Seaman.

I drive what they call a baggage truck, it is an open stake truck for small deliveries, has a capacity of about two and a half to three tons with an open body. We started out with our deliveries from the garage upon orders given by Pat Carroll. After the orders are delivered, we call up. The orders we received are writing called van removal sheets.

Exhibits marked 221 entitled "Auto Van Removal Order" is the type of order we get. The only time we do any hauling in on a written order of this kind is when we get a warehouse order to pick up furniture to be stored. That

is a yellow sheet. Our orders are all in writing. Pat Carroll gives us the van removal order. After it is executed, the order is turned over to Pat Carroll. We make no entry on it. If the order requires us to pick up material and deliver it to the warehouse, we take it to the particular unit of the warehouse it is addressed to.

I have hauled lots of merchandise into the Empire Warehouse at 5041 Lake Park avenue. I received the removal orders for this unit the same as for any other. They all come from Pat Carroll. I know Mr. Barrett is at the main [fol. 432] office at 5051 Cottage Grove. The name of the driver is inserted on the van removal order. We carry removal order blanks in our trucks. If an order is given over the phone, we fill it in ourselves. On the second sheet of Exhibit 221, which is an Auto Removal Order dated January 11, 1938, my handwriting appears. Many times Mr. Carroll gives an order and does not put the name down. This is especially true of the baggage wagon, where a bunch of orders are given at one time. I put my own name down. On this order dated January 11, 1938, the statement there "Not before 11:00 A. M." is in Pat Carroll's writing, as is the date. The note to call on the National Box Company, care of Rug Life, Inc., 1101 38th street, is also in his writing. In other words, this ticket was given to me completely filled out.

On this one, where it says driver, the initials "G. A." are in my handwriting. There is an entry there below the word "for" that is the place for the name of the helper on the wagon. I do not know what that little mark on there means. It is not the signature of my helper. The notation on there which says "See Daniel Nelson" was filled in before I received the order from Pat Carroll. I do not remember this occasion. I know I picked up boxes for the Rug Life Company from the National Box Company before this date, that is, January 11, 1938, but I do not remember when it was. It was either before or after this date. I made two or three pick-ups there. I had the same removal order. I made three pick-ups at the National Box Company, but I do not remember just when they were. This says "Deliver to Empire Warehouse." I delivered it to Lake Park avenue because we call the warehouse on Lake Park avenue, "Empire Warehouse." That is not true of any of the other units.

There are five units of the Empire Warehouse in Chicago. If the order merely says Empire Warehouse, we always take the load to the Lake Park Unit. There is nothing on this slip which shows that I went to the National Box Company, 1101 38th street, merely my pick up order which gives that address. I do not know what the blue check mark means. That is something in the [fol. 433] booking department, after it is turned in by me. I do not know what the pencil check at the bottom of it means. I would say that this is one of the orders I picked up from the National Box Company. The sheet calls for twenty-five boxes, so I obtained that number. They were open wood boxes like Exhibit 73, though they may be a little larger. Exhibit 73 looks like the type and size of box I picked up on this order. I always got the same type of boxes there.

When I arrived at the National Box Company, I asked the shipping clerk if he had some boxes for Rug Life and if he new a Don Nelson. He went upstairs and upon returning said "Here's your order." He gave me a ticket with the shipment. I think the ticket was like Exhibit 170A, though I thought it was yellow. That is, it was the same form, but I believe on yellow paper, though I may be mistaken. I signed the initials G.A. somewhere for the shipment.

Exhibit 109A bears my name. That is my receipt. I do not know the date I received them, though it appears to have been from the ticket May 5, 1938. I signed for a shipment each time I received one. I received a copy of a receipt such as this to take with the shipment. I had an Auto Van Removal Order for the shipment and turned it in when I got back. To the best of my recollection, the date I picked up this shipment was that shown on Exhibit 109A, that is, May 5, 1938. I am not sure of the date.

I turned all the van removal orders in at night time. In looking through Exhibit 107A, I find my signature for pick ups of boxes at the National Box Company on November 25th, which is Exhibit 118A. That time I picked up forty boxes for the Fox Picture Frame Company, Gary, Indiana. I had an auto van removal order from Empire Warehouse to pick up these boxes. I turned this in with my wagon sheet.

Q. Now, will you look through these Auto Van Removal Orders, Exhibit 221, and see if you can find any removal orders for those two pick ups?

A. You mean that I pick up?

Q. Yes.

(The witness looking through some papers.)

[fol. 434] The Court: Are there some in there?

Mr. Hopping: There are not, Your Honor, that I have been able to find.

The Court: Well, what is the use of spending the time looking for something that is not there?

Mr. Hopping: This man said he signed that.

A. I don't see any.

The Court: All right.

Mr. Hopping: Your Honor, I have just been handed three Auto Van Removal orders which were not among the exhibits when marked, one dated May 8, 1939, one May 16, 1938, one dated April 1, 1938; I understand they may be considered as being included in the Exhibit No. 221.

The Court: Here is another one. Let's get them all together.

Mr. Fischer: We are looking through our files.

The one dated May 8, 1939, has my signature on it, as does the one dated November 28, 1938. The one dated April 1, 1938 is not mine. The driver who signed that is named Terven. It shows a pick up of boxes from the National Box Company. The other ticket dated September 16, 1938, shows delivery of goods in the name of Rug Life to 39th street. The only place I think of at that address is the Roadway Transport Company. I imagine I took between ten and fifteen shipments over there. On each shipment I had a removal order such as this. If my name was not on it when I received it, I put it down. I would go wherever the sheet called me to go.

When I went to the Empire Warehouse, I backed to the platform, loaded them up, took them to 39th street, delivering them on the platform there. When I went to the Lake Park Warehouse to pick them up, I saw Mr. Stevens, who is a defendant in this case. He and I never had anything to say about them. My helper and I loaded

them on the truck. Mr. Stevens never said a word about them. He would be there every load. I never saw anyone else in connection with these shipments. I never collected any money for taking these to the Roadway. I never took any money with me to pay for the boxes at the National Box Company. I do not know how they were paid for.

[fol. 435] I did go to a place just west of Western avenue, which I think is either the Norfolk or the Norway Transfer Terminal to pick up boxes or cartons for delivery to the Empire Warehouse. I think I got twenty-five boxes. They were of the same type as Exhibit 73. "Rug Life, Chicago, Illinois," was stenciled on these boxes. It was the same kind of stenciling that was on the filled boxes, which I took to the Roadway, except that one was marked Chicago and the other marked Cleveland or Detroit. I do not remember seeking Chicago to Cleveland stenciling still on the boxes I picked up. I guess it had been rubbed off. I had Van Removal Orders to pick up these boxes. The empty boxes came back over the Norwalk Company consigned to Rug Life Cleaners.

The shipment dated May 8th says those boxes were to go to the Fox Picture Frame Company, Gary, Indiana. My Van Removal Order of that date says that they were to go to the Empire Warehouse on Lake Park avenue. I got my order to take them to the Empire Warehouse from Pat Carroll. When I got to the Warehouse that day, Stevens said, "Here are some boxes for this Fox Picture Frame Company." I had a copy of a bill like that from the Fox Company. I do not think I showed it to Mr. Stevens. I always turned them in with my wagon sheet delivery. I don't remember whether I showed him that or not. My usual practice was to turn my copy of these receipts in with the Auto Removal Sheet. I left these boxes on the dock at the Lake Park Warehouse. Mr. Stevens was there at the time. Nothing was said to me about that Fox Picture Frame shipment being for Rug Life when I left them with Mr. Stevens. The shipment dated November 28, 1938, bears my signature. It is made out the same way. It was a shipment of boxes from the Fox Picture Frame Company, Gary, Indiana. When I took it over to the Empire Warehouse I had this removal order showing it was for Rug Life at Lake Park avenue.

I never talked with anybody at the Empire Warehouse about delivering boxes in the name of Fox Picture Com-

pany in Gary, to the Rug Life Company in that warehouse, because we had lots of occasions like that. We just deliver it. That's all. The entry on the Van Removal Orders [fol. 436] means to take the shipments where it say. When it says on there, "Pick up forty boxes," it does not necessarily mean for the Rug Life Company. Here is National Box Company. That is where I go to pick them up. It says here, "The Empire;" "Deliver them to the Empire." It says, "Deliver to Rug Life, Inc. Empire Warehouse." I did not have Exhibits 165, 167, 168 and 169 when I picked up the empty boxes from the Norwalk Transportation Company. I was empty and called up for work. Pat Carroll told me to go to the Norwalk and get some boxes for the Rug Life.

Exhibit 167 shows the consignee to be "W. E. Lewis & Son, 5041 Lake Park, Chicago." The boxes I picked up at the Norwalk Truck Line were not consigned to this name. They were consigned to Rug Life.

I never saw anyone else at the warehouse when I took boxes there, except Mr. Stevens. He always received them. I never saw anyone else there, except Mr. Stevens when I took the filled boxes out of these from the Rug Life to the Roadway.

The only places I went in Chicago in connection with the Rug Life hauling were the National Box Company, the Norwalk Truck Line, and the Roadway Transit.

Cross-examination.

By Mr. Cavanagh:

Not all of these dispatches were made out by Pat Carroll. There are a couple of them made out by Mr. Bishop. One looks like Mr. Sherman. Mr. Bishop is our traffic boss. Sherman is a clerk over there. These tickets were made out in the regular course of business. There was nothing unusual about these shipments. The bills I received from the box companies were turned in with the removal sheets. I gave them to Pat Carroll. I never called Pat Carroll's attention to the purchaser on these shipments; I just pinned them to the removal sheet and turned them in. I never made any inquiry of my superiors about these shipments. I never told Mr. Stevens that these boxes were directed to somebody other than Rug Life. I did not al-

ways require Mr. Stevens signature when I made these [fol. 437] deliveries to the warehouse. If we were in a hurry, we do not obtain it.

The Lake Park Avenue office used to be the main office. That is why we now call it the Empire. I never talked to Mr. Barrett or Mr. Stevens about these particular accounts. I never made inquiry as to what these boxes contained. I found out what they contained after I came up here. That was about a week before I was called to the Grand Jury. It must have been the latter part of 1939, because I came up here in December. There was nothing suspicious about these particular shipments more than freight orders.

Sometimes Stevens helped when I made these pick ups at the Empire or the Roadway, though I usually had a helper. So far as I know, Mr. Stevens never checked these shipments in and out. He was always present when I brought the empties in. He did not give any receipt for them. He was always there when I loaded the shipments to take out. When I say he was there, I mean he was some place around the warehouse.

At this time, there were two men employed at the warehouse—Dan Carroll and Mr. Stevens. Mr. Carroll works in the front office; Stevens is the warehouse man, puts things away, does packing and different things in the rear end of the warehouse. He would be the only one there, because we have packers there, but he is the only one there regularly. I do not know whether Stevens was employed in other warehouses or not.

CARROLL, DANIEL T., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hopping:

I am manager of the Empire Warehouse, 5041 Lake Park Avenue, and have been there around eight years. Mr. Stevens is a defendant in this case, and is employed there, and I imagine has been warehouse man around five years. If Mr. Stevens is absent, we would bring a warehouse man [fol. 438] from another unit. He is only away on vacation, which is about two weeks out of the year.

I have charge of the cash that comes in, I interview customers and supervise Mr. Stevens. I map out his work. Quite frequently I personally check merchandise in and out of the warehouse. I did have something to do with the rental of Room 549.

This was in April of 1936. At that time, I think there was in inquiry under the name of J. Rosen. I do not know whether Rosen came himself. Whoever came represented Rosen. The room was used possibly two or three months after that. It was used by the same man, who was J. Rosen. I have not seen anyone in this trial that I recognize as being that J. Rosen. I have looked over everybody in the court room since I have been here, and I see no J. Rosen.

During the time J. Rosen's name was on the account, the room was used for this chemical fluid. There was not a great deal of it handled.

I recognize Exhibits 220 and 221 as records of the Warehouse Company. I did not have anything to do with the making of those records. Exhibit 220A is made out in the handwriting of Mr. Stevens. It was made out on April 24, 1936, at the time the room was rented. This is made out in duplicate. The white is sent to the general office, and the yellow sheet underneath is kept in my office. This is the white sheet we have here. It goes to the main office. My brother, W. F. Carroll, who is president of the company, has his office there. That is located at 5152 Cottage Grove avenue. Mr. Barrett also has his office there. Mr. Barrett is general manager of all the units.

Exhibit 220A would go to the clerical department. Mrs. McShane is in charge. The general manager has direct supervision over all of us. This record would be filed in our general clerical office, 5152 Cottage Grove. The president's office, as well as the general manager's office, is there. Mr. Barrett, a defendant in this case, was general manager from April 24, 1936 up to the present time. Exhibit 220 must be a record from the general office, which is pinned to this script. It is not a copy of any record kept in my office. The only other record pertaining to the rental of room 549 kept at my office is a cash record. Whenever any money is paid, cash tickets which are numbered consecutively are [fol. 439] written up by me. The original goes to the customer. A duplicate goes to the general office. I keep a record of everything that is paid, but only in my cash book. The record immediately goes to the main office.

The exhibit says that the party was using Room 549 for boxes of germicide. I do not recall anything particular about the conversation I had with the man who rented the room. I imagine I handled it for the warehouse. I do not remember who the man was. I think I would know him if I saw him. I imagine I did talk with him about the use he wished to make of the room in a general way, though I do not recall just what was said. I do not recall whether I saw more than one man during the time this script, dated April 24, 1936, was in effect. Probably it was just one man.

On November 18, 1936, it was rented on a new script. The party who rented it at that time was the person I knew as Don Nelson. I saw him at this trial. It was the person who testified under the name of Clarence Dracka. The other person who testified in this trial, Henry Skampo, was with him. I never knew him by name. The record shows that they rented the room in the name of the Rug Life Company. It was the same room which had been occupied by J. Rosen. The materials left by J. Rosen were still in the room. They went on with the same room number and same practice. There was some rent due when Dracka and Skampo came in. I took this up with them.

When they first came in, they said they were renting the same room which had been occupied by J. Rosen. When they first came in, I do not think I was there. I saw them a couple of days after they had first come in. That was the time I took up with the general office the question of the account of J. Rosen. Mrs. McShane told me there was about \$160.00 due on the old account. If these people wanted the room, going in from this man's order, they would have to pay up the old account. I told these men what Mrs. McShane had said, and they said they would pay it. They were not present when I talked to Mrs. McShane. Mr. Stevens told me that they had been in. I [fol. 440] was not there when they first came in. Mrs. McShane was the only person in the general office I talked with about this account. I did not talk to Mr. Barrett, though I have talked to him about it since this case came up. I do not believe I ever talked to Mr. Barrett about it at all.

They did not pay up all of the back rent on Room 549. I do not think they had paid the full amount when they left. Nelson was the man I did most of the business with. When I say Nelson, I refer to the man we knew here as Dracka. It is true that they were not to be allowed to rent the room

unless they paid \$160.00 back rent on the J. Rosen account. They did start using the room November, 1936. They did not pay up all of the \$160.00. If I remember correctly, they paid something on account, and the first month's rent for Rug Life. He continued that operation until he went out. They agreed to pay all of the balance of the J. Rosen account, either then, or in payments while they were using the room. This was demanded of them by me in order to let them in.

I am fifty-nine years of age. I was around the Lake Park Warehouse daily, after Don Nelson rented the room in the name of Rug Life. I saw him frequently. He would go in and out of the office going back to the warehouse to take care of his stuff. I talked with him about his business and the rental of the room. I have a telephone in the front office. Don Nelson may have used it, I would not know. I do not recall any occasion when he asked me permission to use it. He could walk right in and use it as any of our customers can. I frequently made calls for him to Mr. Pacente, the trucking man, who has testified here. These calls were to tell him that there was a shipment to be delivered to the Roadway. I don't think I ever called Pacente to tell him about an order to pick up boxes or cartons from the Acorn Carton Company. I don't think I ever gave him any orders for anything else for Don Nelson. During the time Don Nelson used this room, Pacente did all of the hauling for the Rug Life. It was the usual thing for me to call Pacente when he had a shipment to go out. I did so at Don Nelson's request.

I did not know the nature of the rug cleaning fluid Don Nelson was handling. I did ask him, he just said it was [fol. 441] rug cleaning fluid. I never went into Room 549 while he occupied it. I saw the materials he had in there during the time he was renting, though I never paid much attention to it. The time I saw them Nelson may have been there, but I do not recall whether he was in or not. I may have seen into the room when I had some people and was showing other rooms. If we went by and the door was open, I might have looked in. I do not recall that I ever went into the room, though I would not say that I did not.

On one occasion, I saw the packing operations when Don Nelson was preparing these wooden boxes for shipment. I saw him put cans in the cartons and the cartons in the wooden boxes. He was doing this himself.

Nelson came to the warehouse as many times as he had shipments going out, which the records show. I do not say I saw him that frequently, but he would have to be there. The cans Nelson put into these boxes were brought in by outside concerns. I have a few myself. I saw an automobile bring some. It might have had a company name on it, though I could not say whether there was or not. On occasion, I have seen the man that brought these cans to Don Nelson. I do not see anyone here in the court room that I recognize as having brought the cans there.

Q. Well, do you know the defendant, Morris Frank?

Mr. May: I object to that, if the Court please, he said there is no one in the court room that he saw bring cans; now, he is asking him a leading question.

The Court: That does not make any difference. He may answer.

Mr. May: Exception.

I do not know Morris Frank. I didn't know him until I came up here. I remember I have seen him before I came to this trial in the front office of my warehouse. I do not remember whether it was during Nelson's time, or when it was. To the best of my recollection, it was during Nelson's time. When I saw him in the front office, I think he was going through to see Nelson probably. I don't recall. He did go through, I think. I don't think I saw Frank there over twice in my life.

[fol. 442] The Frank I am talking about is a defendant here on trial. I did not see Morris Frank drive a machine in. I did not see any cans there at the time Morris Frank was there. I was never on the loading dock when Morris Frank was there. I do not recall that I was ever on the loading dock at any time when Don Nelson received the cans which he put into these boxes. The last thing I remember in connection with Don Nelson using the room merely is that his use was discontinued. He just quit coming around.

To the best of my recollection, the next people that came in was this Mr. Johnson. Government's Exhibit 161 is a picture of the man. I recognize the picture on Exhibit 192. I think his first name is William, though I do not know his full name. He occasionally came in with Johnson. I first saw Johnson when Nelson brought him in and introduced him to me after he had discontinued the line. By reference

to Exhibit 216, I fix the time as January 5, 1938. It had to be close to that date, because that would be the day this Exhibit was made out. I made it out. I made out both Exhibit 216 and 216A.

There is no signature required on here. I did obtain a lease at that time. The only conversation I recollect between these men was that there was still a back balance due from Nelson. I do not know how much this was. The records will show that. I do not recall whether there was anyone else present at the time Nelson brought the man Johnson in or not. It was handled in the front office. He may have seen Mr. Stevens before he came to see me, I do not know. Nelson said that Johnson was going to carry on the business for him. I mentioned the back balance. Johnson said he would make it up. It was continued in the name of Rug Life. I never saw Nelson around after that.

I saw Johnson there regularly until the Government came in and took the articles out of Room 549. While there, Johnson carried on the same process as Nelson. We had the same rental price, Thirty-Five Dollars a month, with Johnson, as we had with Nelson.

It changed after a while. Stevens came to me and said that they were dissatisfied with the price. I guess Johnson must have mentioned it to him. Stevens told me that [fol. 443] they thought it was too much. Johnson came to me and asked if Stevens had told me. I told him that he had. This was a day, or shortly after Stevens had mentioned it to me. Johnson said he would give me \$5.00 as a whole. They would not be doing much business, and then pay the same cartage. I took the matter up with Mrs. McShane at the main office. She told me that I was over there and knew best what to do. I told her that they were not doing any business and I thought it would be all right. Johnson told me that if business picked up, he would go back to the old storage rate. I did at the time know that he was not doing much business there. It was less than it had been. I could tell this, because Johnson was not around so much. He said he was going to give us \$5.00 whole and pay the cartage. He had been using our trucks and had been paying for them each time he used them. In other words, we simply reduced the rent. By \$5.00 a whole is meant that it is not really storage, but just merchandise coming in and going out. We just charged for every shipment. He would pay \$5.00 every time he brought in a

shipment, and the trucking charge in addition. The trucking charge was dependent upon the number of boxes. I think it was \$5.00 for six boxes and fifty cents an additional box.

In other words, if on a particular day he brought in six boxes and shipped them out, he would pay \$5.00 for handling the shipment. He would then pay \$6.00 for hauling, which would be \$11.00. If there were more than six boxes, he would have to pay fifty cents for each additional box. If our truck brought in supplies, there would be a trucking charge for that.

I phoned Pat Carroll when they wanted a truck to haul something. He is no relation to me.

These auto van removal orders are orders for the use of the Empire trucks to haul canned goods out for the Rug Life. Some of them are for hauling cartons and boxes into the Rug Life. I may have phoned these orders over to Pat Carroll. The initials P. C. mean Pat Carroll. I handled all of the payments and shipments going out. I do not know how the money for picking up the boxes was handled. I never talked to Johnson about that, because it [fol. 444] did not interest our bookkeeping department. Our drivers would go to pick up the boxes. Whether they took the money for this from our company, I do not know. I do not think we advanced any. They must have got it from Johnson or somebody from Rug Life. Never to my knowledge did Johnson give me any money to give to a driver to pay for the boxes or cartons.

I do not think I ever talked with Barrett about picking up boxes for Rug Life or about the account at all until after the investigation started. My brother's initials are W. F. I never talked with him about this account. To the best of my knowledge, Johnson did pay up the back rent due from Nelson. I think he was supposed to start out making large payments, and reducing the account.

To the best of my recollection it was paid up in full. As I recall it, there was \$160.00 to begin with. Nelson paid some on this and Johnson paid the balance.

I appeared before the Grand Jury. My signature appears on Exhibit 224, which is a waiver of immunity I signed at that time. (Government's Exhibit 224 was received in evidence.)

To the best of my recollection, the last time I saw Mr. Johnson was a little while before the last shipment went

out. Our trucks continued to take the shipments out up until the last shipment. Stevens and I continued to phone the orders over to the main office for the trucks. Either Mr. Stevens or Mr. Johnson himself came into the office and told me when he would like to have a truck.

I do not now see anyone in the court room that I saw around Room 549 during the time the Rug Life was operating there. During the trial, I did see Mr. Nelson and Mr. Skampo here. They are the only ones that I have seen here whom I recognize as having been in that room during the time the Rug Life operated. Nelson was, I believe, the only one that I saw near that room or near the elevator.

I identify Exhibit 100. My signature is on there. It is a lease for Room 549, covering two months beginning January 5, 1938. That is the day Johnson took over the Rug Life business. Nelson must have been there that day. To the best of my knowledge the signature Don Nelson is his. [fol. 445] I signed for the Empire Warehouse. This lease was put in the file in my office. He was supposed to take the original, if he wanted it. That would not necessarily mean Mr. Johnson, but Mr. Nelson, I imagine.

As I understood it, Johnson was continuing Nelson's business. I think I kept a copy of this lease in my file. I might have sent it to the main office. On these, we don't use the leases, but very little. Generally, we have a warehouse receipt.

(Exhibit 100 was thereupon received in evidence and read to the Jury.)

Don Nelson did not come to the warehouse after the date this lease was signed.

Cross-examination.

By Mr. Fischer:

I have been in the warehouse business twenty-five or thirty years. My family, meaning my brothers, have been in the business about forty-two years. There are nine or ten warehouses under the control of the Empire Warehouse. They are all located in Chicago. We store every type of merchandise, furniture, rugs, furs, trunks, chemicals of all kinds.

We handle commercial accounts for J. B. Ford & Company, of Detroit; Rome Soap Company, Universal Oil Prod-

nets Company, a linoleum concern that I just can't think the name of, and many besides that. I think we do business with the Metropolitan Oil Company also. The Merchants Chemical Company is the J. B. Ford Company.

All kinds of packages are stored in the warehouses. At the Lake Park Warehouse, we have silver vaults and fur vaults. We rent rooms to cleaners and dyers for their own special use. On those that use their own room and key, we only supply them with elevator service.

I have seen many boxes similar to Exhibit 73 delivered to this warehouse and to the customers of the warehouse. I have known Mr. Stevens ten or fifteen years. He has been employed by the Empire since he returned from the Army. He gets there at eight o'clock in the morning and is supposed to open up. He notifies the (A. D. T.) burglar alarm system, [fol. 446] then cleans up the office, takes care of the furnace and goes about his regular warehouse work. He does everything connected with the care of the warehouse, packing, wrapping, mothproofing, shows customers up to their rooms, and turns out different deals all the time. He goes with people who wish to get certain articles from storage and if he cannot care for the work himself, we furnish another man to assist him.

Indirectly, I am Mr. Stevens' boss. Frequently, I tell him what to do. I am office manager. I interview all people that come in. If there is any further service, I call Mr. Stevens. If people want to see where their goods are stored, I call him and he takes them around. He is more acquainted with the outside of the office than I am. I take care of all cash that comes in and send it over to the main office.

This A. D. T. system is in operation from five o'clock in the evening until 8:00 o'clock in the morning. We have inspection by the Fire Department, and also a State Inspector, who comes around twice a month.

During the time Room 549 was occupied by Rug Life, there was inspection made of the warehouse. Twice a year there is elevator inspection, fire inspection, also inspection by the City Police and State Inspection. There were no complaints from any of these agencies as to what was stored in our warehouse. If there had been, I would be informed.

At 5041 Lake Park avenue, duplicate records of every deal are kept. In my absence, Mr. Stevens can make out receipts for cash. If this occurs, he gives it to me as soon

as I return. Payments for rent or storage are mostly paid to me. There may be four or five hundred accounts in this warehouse. I have handled five or six hundred accounts in a month. I do not recall that I ever asked Mr. Stevens to do any work for Mr. Nelson. I did not tell him to run the elevator for him, because he would have to do that anyway. I do not think I ever had occasion to tell him to help Nelson make shipments, because that would come within his duty. Stevens would have had to help him.

Mr. Stevens had nothing to do with the execution of the lease, which is Government's Exhibit 100. He had nothing [fol: 447] directly to say about how much was to be charged. It was within my power to say how much a customer should pay for rental, though I would always be glad to confer with Mr. Stevens about storage. I did talk with Mr. Stevens at the time the rental was changed from \$35.00 a month to \$5.00 on a stop-over. Stevens said he didn't think I should do it.

Occasionally, I might have seen Mr. Pacente putting the merchandise on his truck, though I didn't pay much attention to it, nor would I say how many times I observed it. The times I did see it, there was nothing unusual about it. We do packing and handling of merchandise for any of our customers. The merchandise in the Nelson account was handled in the same manner as other customers.

In looking at Government's Exhibits 68, 69, 70 and 71, we do have in all our warehouses a brush and pot similar, if not the same as Exhibit 71. We use a little different tightener than Exhibit 69, though it is the same type of equipment. We use it for banding hampers of silver. We do have one of these at 5041 Lake Park. We also have a stenciling machine. Mr. Stevens operates this. Customers are allowed to use it. Also, other people who live around the neighborhood, if they know how to operate it, are permitted to use it.

Mr. Johnson told me he was in the same business as was Mr. Nelson—Rug Life. I never paid any attention to just what he was to do, except that it was to be the same as they had been doing. The balance of \$160.00 was arrived at on the basis of \$35.00 a month rental, which was continued from the time the previous man had occupied the room until Nelson came in. There was a time the room was not used for shipping purposes. It was when Rosen was not around. It is included in the \$160.00.

We have fur storage in this warehouse. They have a little different receipt than the warehouse receipts. We have our own private fur vault. Other cleaners and dyers and furriers handle coats and rent a private room. We only assist them in taking the stuff up to the different floors. After we fix the racks in a room for them, we are all through. They take them in and out for repair. They may come and get some, clean them, and bring them back for storage.

[fol. 448] We have other types of tenants, who use rooms similar to 549 for boxes. There are seven floors in the warehouse. The seventh floor is open storage. There are no rooms on that floor. This open storage is rented upon the basis of $1\frac{1}{2}$ ¢ a cubic foot. The rooms are rented upon the basis of cubical content. The smallest room in the warehouse would run 450 or 500 cubic feet. The largest, I believe is 1,500 cubic feet. There are over 200 rooms. Room 549 has 1,000 cubic feet. I think there are two rooms of this size on each floor in the same position. I believe there are eight 1,000 cubic foot rooms. They are all the same design. There was no difference in the price charged for Room 549, than for any of the others. During the times Mr. Rosen, Mr. Johnson, or Mr. Nelson occupied Room 549, we had a contract to store 35 or 40 thousand P. W. A. records. This took the entire sixth floor and the back portion of the section floor. There were about twenty P. W. A. workers in and about the warehouse at that time writing records off of these books. They were regular accounting books. The State of Illinois keeps one or two men there all the time. If someone is searching a tax record, they take them up. Generally they are around the office in the back of the building.

It is Mr. Stevens' duty to run the freight elevator. Only he and I can do this. No customer is allowed to. This is because of our insurance. Mr. Stevens also makes out bills of lading for customers. He prepares them for all customers that may request it, though I believe he makes them out whether they request it or not. It is up to us to make out these bills of lading. The dock is right near my office.

I am, therefore, there every day. The driveway, however, is at another door, and I do not go there frequently. From the dock, I can see the automobiles and trucks that make deliveries. There are various trucks, vans and automobiles. Individuals drive in to take an article out in their

own personal car. I have seen many private automobiles loading and unloading.

We charge $1\frac{3}{4}$ ¢ per month per cubic foot for rental of one of our rooms. A 1,000 cubic foot room runs approximately \$17.50. When we charge \$35.00 a room, about one-[fol. 449] half of it, or a little over, is for storage and the balance labor charge. By this is meant the handling of goods, running of the elevator, taking the goods from the elevator to the room. We act as agent for the Railway Express Company at the warehouse. I generally make out their waybills and bills of lading, though Mr. Stevens can do it. He does it in my absence.

Recross-examination.

By Mr. Fischer: (Continued)

The Empire Warehouses are now under reorganization. The Mrs. McShane that I testified I spoke with is head bookkeeper. She has been employed there thirty-five years. Her duties are to supervise the girls, passes on credits, and sees that bills are sent out. The Mr. Bishop I spoke about is a solicitor. He also directs the drivers in the morning. By that I mean, he helped Pat Carroll get the drivers on their jobs. There are about ten or fifteen employees in the main office and about twenty drivers. We have thirty or forty extras that are employed driving trucks. There are five or six employees, who do packing. Mr. Stevens assists in packing and goes to the other warehouses to help in this regard.

I do not recall how many times I called Mr. Pacente relative to hauling Rug Life, but it was quite frequently. Mr. Pacente did have other customers in the Empire Warehouse. I know the Museum of Science and Industry was one of his. I know he had a customer on the fifth floor.

To the best of my recollection, there was \$160.00 due at the time the Rosen account was closed out. That amount included a time when the account was not active. In fact, the Rosen account was only active two or three months.

There were some tools in the room when Nelson took over the Rosen account. By tools, I mean stripping machines and devices for banding boxes.

The first time I learned there had been alcohol in the warehouse was when Mr. Barret telephoned that the Government men were making an investigation. This was about

June of 1939. I never heard anyone tell Mr. Stevens that there was alcohol in the warehouse. When Mr. Barrett [fol. 450] telephoned, he asked me to co-operate with the Government men. He also told me to carry on just as usual. Prior to that I don't recall that I ever had any occasion to talk with Mr. Barrett about Rug Life. I never talked with Mr. W. F. Carroll about Rug Life, until after this investigation.

I did testify that part of the time Mr. Pacente did the hauling and part of the time the Empire Warehouse did the hauling. I know Mr. Pacente did not haul while Nelson was there. I spoke to Mr. Nelson about the Empire doing his hauling. We were too busy to take care of it at that time. I called Pat Carroll at the main office. He told me that he couldn't bother with a small deal like that. We were very busy.

The longest any merchandise of Rug Life was left on the dock was, I believe, three or four days. During this time the business of the warehouse went on as usual. There was never anything suspicious about the Rug Life merchandise. I made the lease with Mr. Nelson. I do not think that either Mr. Stevens or I called the main office about this. Mr. Stevens may have. I know Mr. Stevens called the main office the first time Nelson and this man came in and talked about the back account. Stevens told me the following day that he had found out from the main office that there was a back account which would have to be paid. I then verified this. I think Stevens suggested the amount they could pay on this account. I believe it was \$35.00 or \$50.00 the first time. It was that they would pay a certain amount regularly until the bill was cleared up. I think they were supposed to pay \$35.00 a month on that account. Both Mr. Stevens and I negotiated the amount they were to pay for storage. The rental is my job and everything Stevens does is under my supervision.

I do not recall any conversation I had with Nelson after the lease was signed with the person who took over the room. I understood he was to continue in the same business.

I have been in the court room during the entire trial and heard Guy Anderson testify yesterday.

It is our drivers' duty when they pick up merchandise to initial receipts and deliver them to the main office. I do [fol. 451] not know whether Fred Stevens ever sees those tickets or not. Many times the drivers just toss off the

boxes and say that they were ordered delivered there by Pat Carroll. If receipts had been left by anyone, it would be my duty to send them to the main office. However, I never had any occasion to do that. I may have on occasion sent receipts over. If they left a ticket with me I would enclose it in an envelope and send it over.

While Rug Life was in the warehouse, I do not recall ever sending any receipts over, except my cash receipts. Stevens is still in our employ. Stevens sometimes sells space at the warehouse. When he does, he talks it over with me.

At the time the account was handled in the name of Rosen and just before Nelson took it over, I did receive a telephone call from someone who was supposed to be Rosen. In this conversation he informed me that Nelson was taking it over. I called back the number Rosen had left and the same voice answered. The telephone number I called was on the spindle on my desk. I believe a man by the name of Lee handled Room 549 before Rosen went in. He paid the same price per cubic foot, but a different charge for handling. The storage charge is the same per cubic foot for all rooms in the warehouse.

I have talked to members of the Alcohol Tax Unit as well as to you and Mr. Cavanagh about this case. I have heard the testimony and seen the exhibits which indicated that merchandise was picked up at a picture frame company and delivered to the Empire.

It quite frequently occurs that a customer of ours receives merchandise in another name. When this does happen, we hold the article until someone notifies us that it belongs to a certain dealer. That has happened before.

I was never arrested in this case, nor am I a defendant. I do not know if Mr. W. F. Carroll was ever arrested. He is the head of the entire organization. I have known Mr. Barrett about twelve years, and I think Mr. Stevens about the same length of time. This warehouse is licensed by the State of Illinois and the City of Chicago as a public warehouse.

[fol. 452] I know the reputation of Mr. James J. Barrett as a peaceful and law-abiding citizen in the community in which he lives. It is good. I know the reputation of Fred Stevens as a peaceful and law-abiding citizen in the community in which he lives. It is good. Mr. Stevens has been steadily employed at the warehouse since the war.

Re-direct examination.

By Mr. Hopping:

I am named as a co-conspirator, but not a defendant, in this case. The blue written part on Exhibit 17, which says "Ten boxes of Rug Cleaning Fluid," looks like Mr. Stevens' handwriting. I think all of the rest of the writing on that exhibit is his handwriting. I imagine it is a copy of one of the bills of lading Stevens made out for the Rug Life people. The signature, "F. C. Stevens" at the bottom of Exhibit 167 looks like Mr. Stevens' handwriting. Also "W. E. Louis," looks like his writing too. The signatures upon Exhibits 165 and 169 also look like his writing.

Neither Mr. Stevens nor Mr. Barrett are related to me. Mr. Barrett is my brother's, that is W. F. Carroll's, son-in-law.

The warehouse on Lake Park avenue does not have a license or permit from the Federal Government to store alcohol, that I know of. It has not had such a permit since December, 1935, to my knowledge.

I believe Mrs. Lee occupied Room 549 prior to January 1, 1936. I do not know the date they left. I learned it when I overheard the conversation between Mr. Barrett and Mr. Stevens. This was after the Government was interested in the case and Mr. Barrett came over and tried to find out what was in that room. Mr. Barrett and Mr. Stevens went over the records together, and I listened to their talk.

To the best of my recollection, Mrs. Lee occupied Room 549 a little before that. I could not say whether anyone occupied that room between the time Mrs. Lee left and Rug Life started to use it.

I did testify that Don Nelson was required to pay the back rent for this room owing by Mr. Rosen and during the time [fol. 453] it was unoccupied, which was between the dates Mr. Rosen left and the time Mr. Nelson took it over. I do not recall offhand any other instance in which we required a tenant to pay the back rent of a previous tenant, as well as the time during which the room was not used.

When inspectors came to examine the warehouse, I occasionally went around with them or sent Mr. Stevens. I believe there were special regulations with respect to inflammable articles in a warehouse. Rug cleaning fluid might be inflammable. I asked Mr. Nelson regarding this, and he told me that it was not inflammable.

To my knowledge, I did not ask the persons who occupied the room before Mr. Nelson. I do not recall that I ever took the inspectors into the room, so that they might determine if the Rug Life Product was inflammable.

I am still employed in the same capacity and at the same warehouse. Mr. W. F. Carroll runs the warehouses. Mr. Barrett is the active general manager.

I did testify that it was not unusual for our drivers to pick up merchandise for other companies, deliver it to our warehouse, and we would hold it until notified as to whom it belonged. There was a similar case not long ago. Marshall Field delivered a piece of furniture. It was not for the party it belonged to, but for her sister. I held it on the platform a day or two and received a call from the real owner asking if the sister had anything coming from Marshall Field for her. This occurs quite frequently. As manager of that unit, I instructed Mr. Stevens to watch out for things of that kind. It is part of my duty to see that the articles go to the right people.

When the boxes came consigned to the Fox Picture Frame Company, of Gary, Indiana, I did not get in touch with the Fox Picture Frame Company at Gary to ascertain if they belonged to them, because I did not see either the boxes or the tickets.

The second sheet of Exhibit 221 of the van removal orders is in Pat Carroll's writing. I do not know whether I telephoned that order or not. Either Mr. Stevens or I did. I do not know how it happens to say on the bottom "See Daniel Nelson." I do not recall doing that. It is an order to pick up boxes at the National Box Company.

[fol. 454] I heard Guy Anderson testify that he picked up these boxes and that they were consigned to the Fox Picture Frame Company, Gary, Indiana. I never gave Mr. Stevens or anyone else instructions to hold them to see if they did belong to the Fox Picture Frame Company, Gary, Indiana, because those boxes never came to my attention. I never knew that the empty boxes of Rug Life were coming back to Mr. Stevens consigned to W. E. Lewis & Son. I did not know that the tools were leased to the Waukegan Chemical Company at 19 South Western avenue, Chicago. I did not pay much attention to the names of the people the Rug Life products were being shipped to. I could not say positively that I knew boxes and cartons were on occasions being brought in consigned to the Farquhar Manufacturing Com-

pany. I did not know that Rug Life fluid was consigned to the Palmer Distributing Company. I paid no attention to where it was going. I did not know that it was consigned upon other occasions to the Perfect Carpet Cleaners. I did not know that some of the boxes were brought in consigned to the Merchants Chemical Company. I do not remember any of those names. Since I didn't know that, it probably would have been covered by my instructions to Mr. Stevens. He would take care of shipments after they got back there. I would not pay much attention to them.

I do not think the investigators of the Alcohol Tax Unit ever asked me if I had the telephone number of the man who first rented the room in Rug Life.

Recross-examination.

By Mr. Fischer:

I saw the boxes of Rug Life going out; saw that they were stencilled. I never paid any attention to the names of the companies. I saw the empty boxes come into Rug Life. I did not know where they came from and do not know if Mr. Stevens did. I did not know the contents of the boxes that were delivered to our warehouse. Mr. Stevens or no other employee of the Empire Warehouse opens boxes that come in sealed, unless he is instructed to do so by the owner of the goods.

[fol. 455] I have seen Don Nelson use our telephone. Our customers use the phone for their business purposes. I do not know anything about these tools being leased. The warehouse owns its own tools, I think. I do not think that the equipment I have identified here is the same as that which the Empire uses.

Cross-examination.

By Mr. May:

I do not think I testified that I ever saw Mr. Frank going through the warehouse. I saw him in the office. To my knowledge, he did not come there to see me about moving anything. I did not ever see him handle alcohol or cans that had been handled by Nelson. The only place I ever saw him was in the office.

HARKS, EUGENE D., called as a witness by and on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hopping:

I am a Special Investigator of the Alcohol Tax Unit with headquarters in Chicago. I have been located there for the past five years. The first time I ever interviewed anyone in connection with this case was on the 7th day of June, 1939. At that time, I saw Mr. Barrett. Agent King was with me. We introduced ourselves to Mr. Barrett and told him who we were. Mr. King told him that several shipments of alcohol, which had been delivered to the Roadway Transit Company in Empire Warehouse trucks, had been seized in Detroit and Cleveland. That we had information that the alcohol was being manufactured in one of the Empire warehouses and that it was coming from there. In response to Mr. Barrett's question, we told him that we did not believe that there was a still in one of the warehouses. We told him that this alcohol was shipped as rug cleaner under the name of Rug Life Company, Inc. He said he had an account [fol. 456] by that name and, I believe, a young lady brought the Rug Life Company file. He said that they occupied a room in the Lake Park avenue warehouse. According to Mr. Barrett, the file showed that the Empire trucks had made fifteen deliveries from January 1, 1939, until June 7th, the day we were there.

He told us that the account had been running for a long time prior to 1939, but he did not have the figures or papers in that particular file. We asked if a lease had been signed for that room on the fifth floor, and he told us that he thought there was a lease, but it was not in that file. He promised to check into the matter and look up the other files on that space, and to give us all the information he had at a subsequent visit.

On June 20th, King and I returned to Mr. Barrett's office. We told him that we had kept the Lake Park Warehouse under observation since our last call, and that only one load of Rug Life had been seen to come out. This was on June 13th. We saw no cars or trucks bringing alcohol into the warehouse. We asked if any had been brought in since we saw him, and he said, yes, on Saturday, June 10th. He said

a load had been brought in in a private car on that day. I told him that we had watched the warehouse that day until 2:00 o'clock. He replied that the load went in about 2:30.

In response to a question as to the method the men used at the warehouse, Mr. Barrett said it was his understanding that after this liquid was brought in in cans, two men packed it in the boxes. He told us that sometimes it took them a few hours and sometimes they wouldn't get through for a day or so. The Empire trucks would haul it over to the Roadway Transit, after it was packed in the boxes. I asked if he would call me or our office the next time a load came in and the men were working there. He refused to do this. He stated that that was our job to catch the violaters and he wouldn't call us. We continued to watch the warehouse from June 20th until July 10th. During that time no more shipments came into or went out of the warehouse.

Prior to June 7th, two other investigators and I kept the warehouse at 5153 Cottage Grove avenue under observation. At that time our information was that the Rug Cleaner [fol. 457] was coming from that warehouse. It was not until June 7th that we found out which warehouse it was coming from. On May 10th I saw an Empire Warehouse truck with ten boxes on it, such as Exhibit 73. I followed it to the Roadway Transit dock, and saw it unloaded onto the dock. I never obtained access to Room 549, nor to the interior of the warehouse at 5041 Lake Park avenue.

When Mr. King and I first went to see Mr. Barrett, we displayed our credentials as officers of the Government and showed him our authority to make investigations regarding alcohol. At the first meeting on June 7th, we explained the situation to Mr. Barrett. We told him the alcohol had been shipped via Roadway Transit Company to Detroit and Cleveland. We also explained that from our information the alcohol had been delivered in the Empire Warehouse trucks to the Roadway Transit dock. Also, we did tell him that we were informed that the alcohol was coming from one of the Empire Warehouses.

On June 7th, Mr. Barrett told us that he did not know much about the account; that he was going to investigate it. On that day, he compared the shipments recorded in his file with those which King had in his, to see if there were any shipments missing in King's file. They checked up pretty well. The last shipment of Rug Life I saw go out of Chicago was on June 13, 1939.

Cross-examination.

By Mr. Cavanagh:

I was first assigned to this case on April 20, 1939, and worked on it at intervals from then until June 7.

I noticed something irregular about the operation of the warehouse on Calumet and 40th. Prior to June 7th, we were watching several warehouses. On June 7th, Mr. Barrett told us which warehouse the Rug Life account was in. At that time he told us all he knew about the account was what was in the file. He opened the file in my presence. We did not go to Mr. Barrett's office that day by appointment. He did not know we were coming. His first information as to our identity was when we presented our credentials.

[fol. 458] The files were not waiting for us at that time. Mr. Barrett cooperated with us up to June 20th. On that date he refused to notify us when the men were in Room 549. The last load that came out of there was on June 13th. Mr. Barrett did not request me to obtain any search warrant, nor anyone else in my presence. I do not recall that Mr. King ever told me that Mr. Barrett wanted him to obtain some authority. Mr. Barrett did not mention in any conversation at which I was present anything about not wishing to be sued civilly by any of the customers of the Empire Warehouse, because the question of entering the room did not arise while I was present. Mr. Barrett did not refuse admission to the room in my presence. Mr. King was present when Mr. Barrett refused to make the telephone call to me. Mr. Herdrich was not there. I made the request of Mr. Barrett relative to the telephone call. He told us that it was our job to catch violators; that he could not take an active part in assisting us. He may have told us that he did not know that they were violators at that time, though I do not call that he so stated.

On May 10th, I followed an Empire truck to the Roadway Transit. I believe it was a closed truck. It had the Empire name on it in large letters.

I only saw Mr. Barrett twice; on June 7th and June 20th. On the 7th, he showed us all the files he had at that time. He told us that he was going to make an investigation and check up the entire account. As far as I know he did. I never talked to Mr. Stevens. The reason I did not go to the Empire Warehouse from May 10th, the date I saw this truck, until June 7th, was because I was told that the Empire

warehouses were acquainted with the violations that were going on. Mr. Chambers, who testified here, the dispatcher for the Roadway Transit, told me that. We did not go to the Empire Warehouse to verify this, for fear we would blow it up. Nothing in our subsequent investigation developed to show any knowledge on the part of the Empire or any of its employees.

[fol. 459] Redirect examination.

By Mr. Hopping:

When I said I feared we would blow it up, I meant that our purpose in observing the warehouse was to find out where the alcohol was coming from. We did not want the violators to know until we found out the source. We wished to find the still. By blowing up, I meant that the matter would be stopped before we could trace it back. If they knew we were watching, they certainly would not continue to operate. I did not go to anyone else connected with the Empire Warehouse, except Mr. James J. Barrett.

Recross-examination.

By Mr. Cavanagh:

I now know the position Mr. W. F. Carroll occupies. To my knowledge, no agent who worked on this case discussed this matter with him. Mr. Carroll may have been present at the main office during the time I was there, though I never talked to him, and I do not believe I ever saw him. I understand he is president of the corporation. I do not know if he is actively engaged or not.

I did not see Mr. Barrett at his office, except on June 7th and June 20th. I know other agents of the Government were in conversation with Mr. Barrett during the intervening period. I know at least one call was made by Mr. King and Mr. Carrier of our office. It was after June 20th that Mr. Herdrich got into the case.

Cross-examination.

By Mr. May:

I first met Mr. King on April 20, 1939. I was not present when any statements were taken from Frank and Skampo. I did not take statements from them.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Hopping: That is all of the witnesses, if the Court please. There are a few of the exhibits which have been offered here, some of which were conditionally received. The group of Exhibits 107 to 125, numbers 107 to 114, inclusive, were conditionally received; the same is true of [fol. 460] 107-A to 114-A; those are the records of the National Box Company which have been identified by the witnesses from the Box Company, by some of the drivers, one of the drivers of the Empire Warehouse, and part by Mr. Carroll.

The Court: These are 107-A to 125-A?

Mr. Hopping: Yes, your Honor, and the original copies of the same records being 107 to 125.

The Court: I see. They may be received.

Mr. Hopping: Exhibit 126 is the ledger sheet of the National Box Company which shows the entries of the items on Exhibits 107 to 125.

The Court: Any objection to that?

Mr. May: No objection, as far as I am concerned.

Mr. Frederick: No.

The Court: May be received.

Mr. Hopping: Exhibits 127 to 147, are records of the Republic Box Company; they bear serial numbers which correspond to the serial numbers on Exhibits 74 to 88 inclusive of the Republic Box Company, and have been identified by the witnesses from the Republic Box Company, and by the witness Charles Pacente.

The Court: Any objection to these?

Mr. Frederick: No, your Honor.

The Court: May be received.

Mr. Hopping: Exhibits 156, 157, 158 are the records of the Signode Steel Strapping Company, were conditionally received and have been identified by several witnesses.

Mr. Frederick: No objection.

The Court: May be received.

Mr. Hopping: Exhibits 159, are the delivery slips of the Acorn Box Company, conditionally received.

The Court: Any objection?

Mr. Frederick: No, your Honor.

The Court: May be received.

Mr. Hopping: Exhibit 160 are the purchase orders which correspond to the papers in Exhibit 159 of the Acorn Box Company.

The Court: Any objection?

Mr. Frederick: No, your Honor.

The Court: May be received.

[fol. 461] Mr. Hopping: Exhibits 162 through 169 were records of the Norwalk Truck Line of Cleveland, Ohio; no objection was made to that series, with the exception of Exhibits 165, 167, 168, and 169, which have been further identified, and these four exhibits are re-offered. 165, 167, 168, and 169.

The Court: Any objections to these?

Mr. Cavanagh: May I see those, please? If the Court please, as to Exhibits 165 and 168, I don't know that they have been sufficiently identified. There are no objections to 167 and 169.

Mr. Hopping: They were all identified by the witness from the Norwalk Truck Line, Mr. Mills, as being the records of that company made at the time of receiving for shipment the empty boxes delivered there by Carbaugh, and consigned back to Chicago in the name of W. E. Lewis & Son; they have been connected up with the testimony of certain other witnesses who testified, Mr. Anderson, the truck driver, testified to going to Norwalk Truck Line in Chicago on more than one occasion, and picking up empty boxes of that type, taking them to the warehouse at 5041 Lake Park avenue. Two of those are two which counsel have indicated no objection to; four of them are all part of the same series of records identified by the representative of the Norwalk Transportation Company.

The Court: They may be received.

Mr. Fischer: Exception, if the Court please.

Mr. Hopping: With the exception of Exhibits 150, and 150-A, which were withdrawn from offer, and Exhibit No. 101, I believe, which was included, my record shows that all other exhibits were received in evidence during the progress of the trial. Unless that is in dispute, the Government rests.

Mr. May: On the question, if the Court please, we would like to have a ruling as to our demand of the statements taken from co-defendants, and co-conspirators, as to our right to examine them for the purpose of cross-examination. I don't think we have had a ruling on that.

The Court: Proceed.

Mr. Frederick: Shall we proceed with the motion for directed verdict and then come to the question of the ad-

[fol. 462] missibility of these other statements which we were discussing at the conclusion this morning?

The Court: Yes.

MOTION FOR DIRECTED VERDICT ON BEHALF OF DEFENDANT,
BRAVERMAN

Mr. Frederick: In behalf of the defendant Harry Braverman, I wish to move at this time, or rather, renew my motion that the Government be required to elect upon which of the counts of the indictment they intend to proceed, and I desire to have the matter submitted to the jury, based upon the grounds that the indictment here charges seven separate counts, each count charging a conspiracy covering the same period of time, naming the same defendants, but to commit a different violation of a different section of the Internal Revenue Act. This is tantamount to seven separate offenses, and that was recognized by our own Circuit Court of Appeals in the case of the United States versus Reynolds, 273, Federal, page 1, where they said on page 3 that the question of double punishment may not improperly be tested by naming the separate counts as separate indictments, separately tried. This rule was further recognized by the Circuit Court of Appeals of our Circuit Court in the Fleischer case, in which case I appeared as representing one of the appellants, and there the question was presented from a different angle. There was no bill of exceptions. The case went up upon the indictments. The Indictment was drafted in virtually the identical form as the indictment in the instant case. In that case it was urged on behalf of the appellants that there was a question of double jeopardy present, inasmuch as it all related to one conspiracy and Judge Allen, speaking for the Court, and holding that it was separate, and that a sentence under each count was properly imposed, said on page 406, 91 Federal Second, "Unless the indictment upon its face shows proof that there was but one offense, since the appellants were found guilty upon all four counts, we assume that testimony was offered showing the existence of four separate conspiracies.

"While many of the same facts may have been relied on to support the verdict on each count, this circumstance doesn't establish appellant's contention as a matter of law. Each of the offenses charged was separate and distinct."

[fol. 463] In the light of authority plus the well recognized fact that the gist of the conspiracy is the unlawful agreement and the crime is completed after an agreement has been formed and an act committed to carry it out, we then have, I submit here, seven separate crimes, seven separate conspiracies charged. Now, throughout the testimony in the case, and including the opening statement, the counsel for the Government, and the proof has been introduced in support, relates to a theory of evidence, and evidence in going to show an agreement, and the words of counsel for the Government, I believe, is that it was an agreement to engage in the unlawful alcohol business, and the unlawful transportation of it. In order to sustain under the evidence here presented the submission of the question of the seven counts to the jury, we have got to have proof that there was seven separate agreements, each having as its object, the seven separate objectives set forth in this indictment.

Inasmuch as I contend there has been no such proof introduced here, I feel that the Government should be required to elect upon which one of the conspiracies charged that the case should be submitted to the jury.

Secondly, and then pointing more directly to the case as it affects the defendant whom I represent, Mr. Braverman, I wish to move that the indictment be dismissed and the jury instructed to bring in a verdict of not guilty as to him, inasmuch as it appears from the testimony and the case here presented, that there has not been proof of either one big conspiracy, if we may call it that, or one general conspiracy, but there has been proved, if we take the testimony of the Government at its face value, a series of conspiracies, and as the Circuit Court of Appeals for the 10th Circuit in the case of Telman, 67 Fed. (2d) 716, where one large conspiracy is charged, proof of different and disconnected smaller ones, will not sustain a conviction. We have here presented, I submit, if the Court please, and without admissions but for the purpose of viewing the testimony in the light most favorable to the Government, a meeting between a group of individuals in Detroit in 1935, in which there was a discussion of the still, and then another meeting between other individuals [fol. 464] in which there was a discussion of the shipment of alcohol from Chicago to Detroit. There were certain acts and conducts pursuant to that agreement.

Then there was a meeting of another group of individuals, relating to the transfer of alcohol to Detroit. Then another group of individuals, concerned with the transfer of alcohol to Toledo and Cleveland; and then we find some more individuals who met and operated a still in Racine. I say from the light even most favorable to the Government, we have at best presented the proof of a series of separate small conspiracies, and not the one large all-consuming conspiracy that we have here presented.

Further, if the Court please, I wish to move that a verdict be directed in behalf of the defendant Braverman, upon the ground that insofar as the Prosecution is concerned, it is barred by the running of the statute of limitations. The testimony, again in the light most favorable to the Government, is based upon an indictment which charges the existence of conspiracies from November 1, 1935, to and including September 1, 1939. The indictment as has been brought out, was returned, or there was testimony that has been brought out, and was presented in support of this indictment to the grand jury in December of 1939, and I believe it was in December that this indictment was returned. From the undisputed testimony that is thus far presented, we find Mr. Skampo stating that he met Mr. Braverman in the fall of 1935, that he transacted business with him and that business terminated in, he said, the last of January or the first of February, of 1939.

Following that, there has been no testimony of any kind or nature that connects the defendant Braverman with any of the transactions subsequent to February of 1939; on the contrary, there has been direct testimony that he absolutely divorced himself from the alcohol business; that he absolutely had nothing further to do with it; and though they asked him for assistance, he refused them, and had no more participation in it. I submit that at that time, under the testimony here presented, he withdrew from the conspiracy; that more than three years have elapsed since that date, and as support of that three-year limitation, I cite the case of United States versus McElvane, [fol. 465] decided by the United States Supreme Court, in 272, U. S., page 633, which decision was written by Mr. Justice Butler. He stated in the following language: "The proviso—" that is, speaking about the statute of limitations being three years for all offenses provided, and then under the certain proviso that there is a six-year limita-

tion. He says, "The proviso relates to offenses involving defrauding or attempts to defraud the United States when committed by one or more conspirators. It doesn't extend to any offenses not covered by Section 1044. The crime 'Conspiracy to Commit an Offense' is distinct from the offense itself. The language of the proviso cannot reasonably be read to include all conspiracies as defined by Section 37; that is the section which defines conspiracy under the United States code. But if the proviso could be construed to include any conspiracies obviously it would be limited to those which would commit the substantive offenses which it covers, and all the various offenses under the Internal Revenue laws, excepted from Section 1044." That is the section relating to limitation of actions.

"The proviso relates to the preceding part of the section and can have no broader scope, and the legislature, contemporaneous with and subsequent to its passage, shows that Congress intended that the proviso should not include such offense. The proviso and Section 1321, were considered by Congress at the same time. The latter was enacted six days after the proviso. It relates exclusively to offenses under the Internal Revenue laws."

That section is to be applied, rather than the general language of the proviso, added to a statute that never covered such offense, and Section 1010-A, which prescribes for them the same limitations as are fixed by the proviso, was unnecessary if the proviso already applied. The three-year period fixed by Section 1044 is applicable, and defendants were rightly sustained.

That case was later supported in the decision of the United States versus Sharton in an opinion written by Mr. Justice, I believe, Roberts, in 285 United States, page 518.

In this it again reiterated that insofar as conspiracies to violate the Internal Revenue Laws were concerned, [fol. 466] the three year statute of limitations applied. And therefore, I submit that from the fact here, we see an absolute withdrawal, and absolute severance, and the running of the statute of limitations, and hence, the prosecution is barred as to the defendant Braverman.

MOTION FOR DIRECTED VERDICT ON BEHALF OF DEFENDANTS,
KLEIN AND FRANK

Mr. May: If the Court please, without covering the same ground that Mr. Frederick has covered, in support of the motion for a directed verdict in behalf of the defendants Klein and Frank, I raise the same question, as is raised by Mr. Frederick as to the statute of limitations, the three year period. Inasmuch as in the first count of the indictment it is charged that the defendant, Braverman, was introduced to Skampo. If that be true, the statute of limitations would be applied to him, as well as Braverman, and because if a mere introduction to him would start the conspiracy, a withdrawal by Braverman would stop the statute of limitations from running, the same as it would in the case of Braverman.

I also raise the point on behalf of those two defendants, and in furtherance of my motion as to making the Government elect as to which count in the indictment they wish to proceed, as requested at the opening of the case. We are also calling the Court's attention to count number eight in the indictment, of Harry Klein, wherein it is charged that Klein, together with all the persons mentioned in this indictment on count seven—I said count eight, but I meant count seven. This is the last count of the indictment, and set forth as an overt act, that Klein took the co-conspirator, Braverman, to the place in the vicinity of Livernois and Michigan avenue. There has been no proof whatever that this took place; there has been no proof whatever that Klein had anything to do with Johnson or Slesur, or that they knew him, that he knew them, at any time, and there has been no proof to sustain that count. I also maintain, if the Court please, that as to each count taken separately, the proofs do not contain enough by which the Court can give this case to the jury; and in furtherance of my motion for a directed verdict, I believe the facts don't prove a conspiracy. There is no knowledge shown between Klein and Slesur; there is no knowledge shown that Klein had anything to do with the alcohol shipped out [fol. 467] of the warehouse in Chicago; there is proof that he worked for the Government as informant, and I think that that proof would outweigh such facts as have been presented here by people whose testimony must be scrutinized very carefully. In furtherance of that, I ask the

Court to direct a verdict on behalf of both of those defendants.

Mr. Frederick: I wonder if I may intrude for a moment? I have been informed that in the course of my discussions I stated the year, 1939, as being the time of the cessation of Mr. Braverman, whereas I mean to say that it was January, 1936.

MOTION FOR DIRECTED VERDICT ON BEHALF OF DEFENDANT WAINER

Mr. Dougherty: If the Court please, I don't care to argue my motion. I would like to join in the motion made by Mr. Frederick on behalf of the defendant Wainer. His argument covers about everything I can say to your Honor, and I would like the advantage of that motion, if I may have it, and also of his arguments.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court (Interposing): Frankly, I haven't read this indictment. I have looked it over. Personally, I say this: I have said this a number of times to the Government, and I had a lot of practice in criminal law in the years past, and I can't for the life of me conceive why the United States Attorney or Prosecuting Attorney, will draw an indictment containing fifty different offenses, when one or two would be sufficient. I haven't read this indictment, but I see one indictment has about seven or eight counts. I want to hear you upon the questions. In my judgment, it is a serious question. According to your claim, there are numerous defendants here, some joined early and left, others joined later and stayed, and others joined later. A conspiracy compares to a snowball rolling along, the farther it goes, the bigger it gets. It always takes on more people. Now, in the course of this proof here, it is obvious that when a man enters into a conspiracy to sell alcohol, to make it, to transport it, and to fail to pay the tax required by the Government, and to fail to procure the bond required by the Government to operate a still, and to fail in numerous other requirements, I just wondered a good many times [fol. 468] whether you can take this one right over here and say, "They have been transporting that, so all right, that is one." Now, then they have got a conspiracy here to

operate, this whole affair, but they haven't paid their taxes. Now, that is another one.

Now, do I understand that each separate conspiracy has reference, first, to manufacture, to transportation, to failure to pay tax, and others?

Mr. Hopping: Yes, your Honor, those are the separate illegal objects, alleged as to the objects of this conspiracy.

The Court: I want to hear you on the law as to what right you have to separate all of these, when, as a matter of fact, in my judgment, you call it one conspiracy.

Mr. Hopping: As stated a little earlier in the trial the theory of our case here is one following the Fleischer case in this district, and in that case four of the same counts were used in an indictment, each count covering the same period of time, charging the same defendants, covering the same territory of the conspiracy.

The Court: Did you allege in that—I didn't try that case—did you allege in that indictment that these men entered into a conspiracy to manufacture liquor, entered into a conspiracy to transport it, entered into a conspiracy to sell it, all within the same range of their activity?

Mr. Hopping: That is the case, your Honor.

The Court: Was the question cleanly raised?

Mr. Hopping: That was the main question in the case, and, as Mr. Frederick stated, it was raised on the indictment itself.

The Court: The criminal law is this: If those men individually or otherwise, committed one of those crimes, they could be indicted for it, but if they went into transactions among numerous others then you could come in and say that that whole gang has been in a conspiracy. That is a conspiracy.

Mr. Hopping: In the argument of that case, the Court of Appeals went into the language of Section 88, which says, "If two or more persons conspire to commit any offense against the laws of the United States——"

The Court: That is true.

[fol. 469] Mr. Hopping: If we charge them merely with setting up the still, with conspiring to do that, that would have been a complete conspiracy, and the object of the conspiracy as a part of the charge of conspiracy, that is what the Court of Appeals held among other things in that case. A conspiracy isn't complete, or a charge of conspiracy,

unless it is alleged what illegal object or what offense against the laws of the United States is to be committed. The agreement to set up a still without registering it, is a complete and separate offense of conspiracy.

The Court: I agree with you on all of that. You haven't reached my point yet.

Mr. Hopping: Then the same set of facts by which they set up the still without registering it, may also show that they entered into the business of distillers without giving bond, and that may be properly charged in the second count in the same indictment.

The Court: Charging what?

Mr. Hopping: Charging conspiracy.

The Court: You might charge the substantive offense.

Mr. Hopping: No; charge conspiracy in a second count, to carry on the business of distillers without giving bond, that was the second count in the *Fleischer* case. The same set of facts, the Court said, might partly be used to show that they agreed to and did manufacture mash to be used in the same distillery, and it is proper and permissible for the Government to charge a third count of conspiracy, the object to be to commit the other offense, to manufacture mash, and the fourth is to possess the alcohol, which is produced in that still. That is a fourth separate offense committed against the laws of the United States.

The Court: There is no question of those offenses, as being all there.

Mr. Hopping: Now, in the *Fletcher* case, our Circuit Court said this: The four counts are identical as to time. The period covered is over twelve months, and different overt acts are set forth in support of each count of the indictment. The appeal was prosecuted under the rules of practice and procedure in criminal cases brought in the District court, and the record, therefore, contains no bill of exceptions unless the indictment upon its face shows there is but one offense, since the appellants were found guilty on all four counts, and we assume that the testimony was offered to show the existence of four separate conspiracies, while many of the same facts may have been relied upon to support the verdict on each count. This circumstance doesn't establish appellant's contention that each offense was separate and distinct. Each of the offenses was separate and distinct, but it doesn't state that the conspiracies were separate and distinct, one having an

object to commit this offense against the United States—this offense is in the second count—and another offense in the third count, which is permissible and is approved by the Court of Appeals of the Sixth Circuit in the United States versus Fleischer case.

The Court: They say there was no record there. Wasn't there a printed record that they went up, solely on the sufficiency of the indictment?

Mr. Hopping: On its face, yes. If the Government charged the seven counts as we have here, and failed to show any evidence that they agreed to enter into the wholesale and retail business, but merely showed that they manufactured and possessed the alcohol, we would undoubtedly fall within the language of this decision, which says that unless the Government shows proof of the object to commit another offense, it wouldn't be a separate offense. They were speaking merely of the indictment.

The Court: What are you going to do in this case? This is quite a continuing affair. You are going to call upon this jury to sit down with a paper and pencil and keep track of all these names and say, "Here, on that first conspiracy back there, these men down here weren't even members of it. Therefore, you can't convict them of that first conspiracy."

Mr. Hopping: The conspiracy is one as to time and place, and as to all the parties named in the indictment. That is our theory. It starts with a certain number of the conspirators. The evidence shows that Harry Klein introduced Harry Brayerman to Henry Skampo, and they agreed to enlarge a still which was then being operated by Skampo and Draeka, and then that comes into the picture. They went about to enlarge that still. There was the agreement [fol. 471] and an overt act to go into the distillery business, to set up a still without registering it, to manufacture mash, before they actually produced any alcohol, but not before—

The Court (Interposing): Just there, suppose two of them get out? They say they are through. Then they take on others, and they come along, and those others begin to manufacture, or if they have already been manufacturing, then they take on the question of transportation, the question of selling. What are you going to do with those who were out?

Mr. Hopping: I don't believe the evidence shows that any of those got out before—

The Court (Interposing): Suppose the evidence does? I am not saying they got out. Suppose the evidence does? You have a jury here and that is quite a problem. If there are some men that dropped out, he is guilty of conspiracy down to the time he leaves, if you show sufficient facts, and whether or not he did an overt act knowingly, or aided others in committing an overt act, why, all right. But suppose he says, "All right, you fellows have got that still, and I am just going to quit. I am going down here somewhere and get into another business." Now, you come along with the 5th, 6th and 7th counts, and say, "Here is a conspiracy for transporting this. Here is a conspiracy for possession of alcohol which is not in stamped containers. Here is a conspiracy for selling alcohol." By the time you get down to that action, then that man is gone.

Mr. Hopping: We say, Your Honor, that any member of the conspiracy is bound by the acts of any of the conspirators, during the time that conspiracy continues.

The Court: That is so elemental.

Mr. Hopping: Now, in this case, we have Braverman, Klein, and Skampo, and also Draeka, starting out, first with the conspiracy to set up a still and operate it, and they stay in it certainly. Braverman, under any construction of the evidence, was in it until after they started the wholesale and retail business, and after they transported it over here, and after they manufactured and possessed it, and the mash, because the alcohol was there.

[fol. 472] The Court: What was the period of time covered by these various checks, that you introduced in evidence to Braverman and to this woman, or whatever her name was?

Mr. Hopping: From December, 1934, to March 11—no, I will repeat that. From December 15, 1935, to March 11, 1936, and during that period of time the testimony is that they were for payments of an equal number of shipments of alcohol which came over from Chicago, which were delivered by the transit companies to Wyandotte, received there, paid for at wholesale rates, retailed in unstamped containers, and concealed and deposited in this place down there until they were distributed. All of those being the objects of this illegal conspiracy, offenses against the United States, which they are charged with, and are

charged to be objects of their conspiracy, and which actually were accomplished during the time that group operated as a nucleus.

Then it continues on from there. Wainer appears within a few days, I would say, for this reason: The tools were leased about April 12, 1936, and they were in that warehouse continually, so far as our evidence shows, right straight along. The evidence of Skampo and Dracka is that Wainer came to Detroit and said that he wanted to send them alcohol, if they would receive it, and that they said they would. He said he would handle it the same way Braverman had. These purchases of supplies from the box companies in Chicago, began not later than the middle part of April, 1936. Whatever gap there was there, was only the time which would normally be necessary for one man to make arrangements and continue on with the same kind of business from the same place, and the same way, to the same people. Then, with Mr. Wainer in the conspiracy, the shipments continue through April, May, and June, and also to the end of July. Then, he says that he doesn't want to ship any more, and they then get some from Klein, which came from Chicago, not over the public carriers, but by independent carriers. They come in cans from the same source, same place, and they distribute that in the same way. It is still a wholesale and retail business by one of [fol. 473] the original conspirators, and three of the original conspirators are getting it from the same locality.

Then, through the Summer of 1936, they get their alcohol through Klein, and in November of 1936, Dracka and Skampo go to Chicago and see Wainer, and take over the shipping end from the same place in the same way. The same names, same materials, and they get them from the same sources, and they ship from Dracka to Skampo in Detroit, for November, December, January, February, March, April, and May, continuing the same operations. In May, 1937, Dracka stopped shipping from Chicago, and again they picked up as they can, anywhere, and the association with Klein continues through all of that period. In 1936, Fidler gets the delivery ticket from Klein for a very similar shipment over the Cushman from Chicago, and delivers one and disposes of it retail. He buys it wholesale. Three days later he gets another one and is arrested with that. Then, in January of 1938, Dracka

takes Al Johnson down to Fred Stevens in the warehouse. Stevens, by the way, has been in the warehouse since the day of the first shipment, and is positively shown to have been an active participant in the shipping end of it from the earliest shipment going out of that warehouse in April, 1936. Johnson turns over this Rug Life business in toto, or Dracka turns it over to Johnson. Johnson has a helper by the name of Bagdonas, and Dracka has testified that he got part of the alcohol while he was shipping out of Chicago, from the defendant Frank, furnishing a source, and part of it was from Johnson. They were working together during the time Dracka was over there. Johnson and Bagdonas continued to operate it, and they appeared in all three places in Chicago, Cleveland, and Detroit. They shipped it out of Chicago, they run over to Cleveland, and they got it and gave it to the retailers over there, and saw that it got into their hands. Then they come to Detroit, and see that it is deposited in the cartage company here on Twelfth Street, and it gets from there into the hands of the retailers.

Now, they continue on with that kind of operation, even getting the raw materials back from Cleveland by Roadway [fol. 474] Transit, sending them into the warehouse, and reloading these boxes, which is certainly a wholesale business. It is part of the same conspiracy, but that is a separate offense and is a different character of offense from the still. Now, the still at Racine, Dracka gets on the shipping end in Chicago, and he is buying part of it from Frank, and he is buying part of it from Johnson. We have shown that the part that came from Johnson was being manufactured by Johnson, Bagdonas, Stanley Slesur, who had the two employees, Rouba and Wasilewsky, co-conspirators, who were all manufacturing the stuff in the Racine distillery. We have shown that it was taken by the truckload right out of the distillery, deposited into the garage in Chicago. From the garage it was brought right to the warehouse, and delivered to Dracka, and he, in turn, put it in the boxes within a few hours after he got it, and sent it to Skampo and others in Detroit, and Toledo, and Cleveland. Dracka didn't send any to Cleveland, that I know of, so I will withdraw that statement. He did send it to various places in Detroit. The illicit alcohol was manufactured right out of a dis-

tillery, deposited and concealed in a warehouse, packed and shipped wholesale and retail, and it was all an enormous combine working together. They continued right up in that same way until June of 1939.

We have charged that during that period of time, the defendant Barrett was general manager and acting as such over the warehouse in which this operation continued over a period of three and a half years. This was the shipping point out of Chicago where all of these acts took place. It was in the same place, one room in a warehouse building under the supervision and control of Mr. Barrett. The warehouse man in that unit was Mr. Stevens, and he took such an active part in the shipping of it that you might almost say he ran the business for them. He took in the empty boxes, and he took in the alcohol when it was set on the loading dock, and he would take it all up in the room and pack it for them, and stencil it, and send it out for them, and he would make out the waybill for them, and somebody, or himself, would call the Roadway [fol. 475] Company and reserve space in the truck to have it delivered to Detroit and Cleveland. This warehouse man, and this is a circumstance which I say is very convincing, is a man personally known to Mr. Barrett for a good many years, and is personally known to the old gentleman, Mr. Carroll, who is named as the office manager for that unit, and it is a fair question, I think, whether that circumstance alone isn't sufficiently convincing that Mr. Barrett either knew what was going on, or he might have had the warehouse organized so that he purposely didn't ask just what that was.

MOTION OF FORMER JEOPARDY ON BEHALF OF DEFENDANT,
WAINER

Mr. Dougherty: I have one motion I would like to present, if I may.

The Court: What is that motion?

Mr. Dougherty: Motion of former jeopardy, if the Court please. Mr. Wainer has signed this. Will you swear him?

(Whereupon, Mr. Wainer was sworn.)

Mr. Dougherty: My motion, if the Court please is as follows: "Now comes Allen Wainer, one of the defendants in the above-entitled cause, and presents this, his plea of

former jeopardy, and respectfully represents as follows:

That at the April term, A. D. 1936, of the United States District Court for the Northern Division of the Southern District of Illinois, he, together with numerous other persons, was indicted by the Grand Jury, charged with having conspired to violate the laws of the United States of America, as will more fully appear by a copy of said indictment hereto attached, made a part hereof, and for the purpose of identification, marked Exhibit 'A.'

That at the November term, A. D. 1936, of the District Court of the United States of the Eastern Division of the Northern District of Illinois, he, together with divers other persons, was indicted and charged with violation of the laws of the United States, as will more fully appear by a copy of said indictment hereto attached, made a part hereof, and for the purpose of identification, will be marked Exhibit 'B.'

That on or about the 6th day of July, A. D. 1936, he, together with other defendants, was put upon trial in the United States District Court for the Southern District of [fol. 476] Illinois at Peoria, Illinois, and that by the verdict of the Jury and the judgment of said Court, upon said indictment, he was sentenced to serve two years in the custody of the Attorney General of the United States. That afterwards, on the 21st day of April, A. D. 1937, he entered a plea of guilty to the indictment heretofore referred to, and marked Exhibit 'B' in the United States District Court of Chicago, Illinois, and upon said plea of guilty, he was sentenced to serve a term of two years and six months in the United States Penitentiary, said sentence to run concurrently with the sentence imposed at Peoria, Illinois, herein above referred to.

That on the 24th day of April, A. D. 1937, he surrendered himself to the United States Marshal for the Southern District of Illinois, at Peoria, Illinois; that he was kept in jail until he was transferred to the United States Penitentiary at Atlanta, Georgia, entering said Penitentiary on June 6, A. D. 1937."

The Court: He served his time, is that it?

Mr. Dougherty: Yes.

The Court: Get down to it. I want to see the questions you raise. That covers a lot of territory.

Mr. Dougherty: "That he remained in said Penitentiary until April 14, 1938, at which time he was admitted to parole; one of the conditions of his parole, being that he remain within the limits of the Northern District of Illinois until April 23, 1939; that from the time he was released from said Penitentiary until the time he was finally discharged, he was at all times under the supervision of the United States Parole Officer at Chicago, Illinois, and was required to, and did make all of the reports required by that Department. That on July 10, 1939, he completed his parole term successfully and was definitely and finally released from supervision.

"And this defendant respectfully shows unto this Honorable Court that the matters and things charged in the instant indictment, and the evidence whereby the charges of said indictment are sought to be proven by the United States, are substantially the same as those whereby he has heretofore been convicted in the United States District [fol. 477] Court for the Southern District of Illinois and in the United States District Court for the Northern District of Illinois;

The Court: Do I understand from that, that he was convicted in Illinois, for a violation, a conspiracy, in Peoria?

Mr. Dougherty: No, at Chicago.

The Court: Tried in Chicago, but did it occur in Peoria?

Mr. Dougherty: The first was down in Peoria, and he pled guilty at Chicago.

The Court: And those facts were similar to the facts right here, or the same facts?

Mr. Dougherty: They were proof competent under that indictment at Chicago, and for the same period of time, if the Court please.

The Court: Was it the same proofs, same transactions?

Mr. Dougherty: Could have been the same transaction. There was no proof against him at any time because he pleaded guilty, but the indictment charges a conspiracy to do the same things, that this indictment charges.

The Court: In this same place?

Mr. Dougherty: At Chicago.

The Court: In this warehouse?

Mr. Dougherty: It doesn't set that out.

The Court: Just to sell whiskey?

Mr. Dougherty: To sell whiskey, transport whiskey, manufacture whiskey, all in one count.

The Court: Suppose that while he was doing all that, he was still sending in a little more, extending into a little more territory? You know, they tell the story about the fellow taking in too much territory, and he got over into another district. Do you mean to say that if he is convicted over in Illinois in one district, that he can't be convicted here?

Mr. Dougherty: No, not at all.

The Court: What is your former jeopardy?

Mr. Dougherty: My former jeopardy is that he was charged in a conspiracy case by the Grand Jury of the [fol. 478] Northern District of Illinois, with having done the same things that he is charged with having done here.

The Court: You mean the nature of the same things, or the identical transactions?

Mr. Dougherty: The identical thing, of course, different overt acts which are not a part of the indictment.

The Court: Well, they certainly are a vital part of it.

Mr. Dougherty: No, the overt acts, as I understand it, merely give the Court jurisdiction to try a case. They are no part of the indictment.

The Court: You can't convince me on that, so go ahead.

Mr. Dougherty: At any rate, he is here for the same period of time, because the Grand Jury turned this indictment at Chicago in November, 1936. My client is charged, or the proof is here, that he sold unstamped whiskey to two people at Chicago, during the month of April, 1936. Now, can the Government go so far, if the Court please, as to charge him in a general conspiracy at Chicago, with violating all of these Internal Revenue laws in the manufacture, sale, transportation, and possession, and everything else, of intoxicating liquor, and he sells that liquor at Chicago, and then because some of it arrives in Michigan, if the Court please, can he again be punished for a separate conspiracy over here in Michigan because of those two sales made at Chicago? It has always been my understanding of the law of conspiracy—

The Court: (Interposing): The two sales that were made and are involved here, were not involved in those others, is that it?

Mr. Dougherty: To that, of course, I can't say.

The Court: That is the meat of this thing here.

Mr. Dougherty: It is the meat.

The Court: He could belong to 100 conspiracies, selling liquor in different districts. The proof in this case is that he sold the liquor at Chicago.

Mr. Dougherty: He was indicted for conspiring to violate that law in Chicago. Now, certainly that proof would have been competent against him over in Chicago on that indictment, and can we say that because a United States Attorney [fol. 479] chooses not to use some particular proof, that he can leave that proof out, and then can that man be indicted and sentenced over in some other district, when the proof was a part of the conspiracy at Chicago? This is a general conspiracy at Chicago, charging him with doing all of these things, if the Court please. The proof of the Empire Warehouse was thoroughly competent over in Chicago. Now, if the United States leaves it out—

The Court (Interposing): The proofs here insofar as his sales are concerned, are that he happened to get into another conspiracy that was running out of the State into another State. The liquor was brought or shipped over here, but he was selling it all at Chicago. That certainly was proof competent. It is a question for the jury to determine as to whether he was a member of the conspiracy.

Mr. Dougherty: But wasn't it part of the other conspiracy at Chicago?

The Court: I don't know. I haven't got knowledge enough of the facts. I can't get them.

Mr. Dougherty: I can't give them to you, because, as I say, there was a general indictment for conspiring, together with a great number of overt acts in Chicago, which covered the same identical period of time returned by the November, 1936, Grand Jury, which charges him with selling liquor over there, conspiring to sell liquor, conspiring to possess unstamped packages of liquor, conspiring to do all the things on one count of an indictment that this indictment charges on a number of counts.

The Court: Different liquor?

Mr. Dougherty: Whether it is different liquor or other liquor, no one knows;

The Court: Different sales?

Mr. Dougherty: No, the indictment doesn't say different sales. It charges him with conspiring to sell.

The Court: Different sales than he made in Chicago involved in this transaction here was a different sale of

different liquor than that which he sold in the other conspiracy, is that it?

Mr. Dougherty: Well, the crime is conspiracy, not the selling of the liquor.

[fol. 489] The Court: If he don't sell it, there is no conspiracy, so far as he is concerned.

Mr. Dougherty: If he agreed and somebody else sold it, there would be a conspiracy, of course.

The Court: All right.

Mr. Dougherty: But that proof was competent. He pleaded guilty. Now, he pleaded guilty to the indictment over there, so naturally, I don't know. I can't guess whether the United States Attorney over there was going to use this proof against him, or not. I know it was competent against him, if he wanted to use it.

The Court: Well, we will adjourn for a few minutes.

The Court: What is this defendant's name?

Mr. Dougherty: Allen Wainer, if the Court please.

The Court: Outside of the charges in this indictment in the beginning, there are no overt acts charged against this man, Wainer, at all, in this indictment. It is all in Knox County, Illinois.

Mr. Dougherty: There is the Southern District of Illinois indictment, if Your Honor will look at the indictment marked Exhibit B.

The Court: He is charged there as alias Al Wainer, alias Joe Burns, alias J. Lipkin.

Mr. Dougherty: This is in Chicago.

The Court: This is in Will County, Illinois.

Mr. Dougherty: And Cook County, if the Court please, if you will read, in Cook County and in Will County. It is count ten of the Chicago indictment.

The Court: This Harry Braverman, is he the same one that is here?

Mr. Dougherty: Yes, your Honor.

Mr. Frederick: Yes, Your Honor.

The Court: I see nothing here which charges any sales of liquor made to the Empire Warehouse, or delivered at the warehouse, or involved with any of these defendants here.

Mr. Dougherty: Would that be necessary to make the same offense, if the Court please? In other words, can the Government indict all of the United States.

DENIAL OF MOTION OF FORMER JEOPARDY ON BEHALF OF DEFENDANT, WAINER

The Court: If your theory is true, a man can only be, possibly, guilty of one conspiracy; if he committed an [fol. 481] offense in one state, he cannot be guilty in another state of handling liquor. I have not the time to go over it carefully, and I see that you are not sure of it. Your motion is denied. I don't even see any former jeopardy.

Mr. Dougherty: Very well, Your Honor. Exception.

The Court: Is that all of the motions?

Mr. Frederick: Yes, Your Honor.

Mr. May: That is all we have, Your Honor.

RULINGS ON DEFENDANTS' MOTIONS

The Court: I think, upon the question of the admission of these affidavits, or statements, made by the defendants, the Court will deny your motion. You may have an exception in the record.

Mr. May: Thank you, Your Honor.

Mr. Frederick: Exception.

The Court: And upon the question of motion to dismiss, as to the defendant Barrett, I will determine the question between now and next Monday, and also upon the question of requiring an election, according to your motion, Mr. Frederick, you are asking the Court to direct the Government to elect, I will dispose of that Monday, too.

(Whereupon, the Jury was brought back into the courtroom.)

The Court: Members of the Jury, you are all excused now until Monday at 1:30.

(Whereupon, the Jury was excused.)

Mr. Frederick: May I cite another case to Your Honor, just the citation in reference to the selection of the Kissell versus U. S. 218, U. S. 601, decision by Justice Holmes.

The Court: The Fleischer case is in the 91 Federal, second.

Mr. Frederick: Yes, Your Honor.

The Court: Page 2?

Mr. May: 404.

The Court: 404?

Mr. May: Yes, sir, volume 91, second, number 4.

(Whereupon, this matter was adjourned to Monday, June 3, 1940.)

The Court: All right. Proceed. I guess I have one matter here that I held over from our last session on some [fol. 482] motions that have been made. I think all of them were disposed of, except the question of the defendant Barrett, and as to that motion, it will be denied for the present.

Mr. Frederick: No, Your Honor, the motion for the election was not finally disposed of, either.

The Court: Oh, yes; and that motion is denied also.

Mr. Frederick: I would like to note at this time an exception to the denial of the motions in toto. They were made in one group.

The Court: All right. Proceed.

Mr. Cavanagh: May we have an exception, if the Court please, to the denial of the motions?

The Court: Yes.

Mr. May: The same exceptions, if the Court please, as to the defendants, Klein and Frank.

Mr. Dougherty: I take it, that exception goes to all defendants, if the Court please.

The Court: Yes.

STEVENS, FRED, a witness called by and on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cavanagh:

I live at 6954 South Laffin street, Chicago, Illinois. I have lived there for the past three and one-half years. Prior to that I lived at 6961 South May Street. I am forty-four years old and live with my wife and two children. I have one child going on eighteen and another going on twenty-two. I graduated from the Eighth Grade of the Holy Angel School. I graduated at the age of fourteen and then went to work on a farm in Merton

Junction, Wisconsin. I remained there five years. That was the year 1917, when war was declared. I returned to Chicago and enlisted in the 122nd Field Artillery. I was in the army twenty-seven months; eleven months in the United States and sixteen months overseas. I was attached to the 33rd Division. I was honorably discharged on August 8, 1919.

In September, 1919, I started to work for the Empire Warehouses as a truck driver. I have continued to work for them since. I drove a truck three or four weeks, then Mr. M. A. Carroll, president of the firm, hired me as his private chauffeur. I worked for him in that capacity for possibly six months. He then put me into the warehouse at 5153 Cottage Grove. I remained there until 1927 or 1928 and was then placed in their commercial warehouse at 40th and Calumet. That warehouse handled all commercial accounts such as furniture companies having new furniture, chemical companies, the Rome Soap Company, J. B. Ford Company. I went over there to inventory the house. I remained eight or ten months. I was then put outside as an estimator and worked in that capacity for about a year and four months. While I was employed in the Oakland Branch, I had to inventory all of the accounts in the building. The storage there consisted of all types, canned goods, sugar, soap, drums of soap, drums of oil, cans of oil. There were all types of containers from one-gallon cans to thirty-two-gallon drums.

In 1932, I was made warehouse man at the Stoney Island Branch, that is located at 6820 Stoney Island Avenue. My duties there consisted of cleaning the floor in the morning, taking care of the fire in the winter time, and after the office girl got there perform my warehouse duties, such as taking furniture upstairs, storing it, bringing it down and putting it on the platform for trucks, packing, moth-proofing, crating, etc. When people wanted to get one or two pieces out of storage, I would have to go up and tear out the deal. By "tear out" I mean if a person has several hundred cubic feet of storage and they want one article out, I would have to get that article and then replace the rest of the storage. It was part of my duty to make out bills of lading, manifest express shipments. Sometimes I also did crating. At all times

it was up to me to mark the shipment and to make out the bills of lading.

[fol. 484] At the present time, I am employed in the Lake Park Branch. That is known as the Empire Warehouse. The reason that is known by that name is because it was originally the first office. As the other branches were acquired, they were given other names. Empire Warehouse Company has nine buildings in Chicago. I have been in the Lake Park avenue warehouse which we call the Empire Warehouse, between five and six years. It isn't supposed to open until eight. I am there about 7:15. I get the office work done. It is a transient neighborhood and people stop to pay their bills on their way to the bus line or I. C. I take off the burglar alarm, sweep the office, clean up, and in the winter fix the fire.

The building there has a fifty-foot frontage and is one hundred fifty feet deep. It has seven floors. Three floors are private storage. Two and one-half floors are open, or general storage. The first floor is a loading platform and packing department. The loading platform is a large opening on the north end of the building, where the trucks pull in and go out. The trucks pull right out of the street. There is no rear entrance to the building. There is a big driveway into the loading dock, one on the south side, one on the east, and a big steel door on the east and for the east end platform. The south side opens to the dock. The building faces east and west. The platform is about fifty feet wide, I would say, and approximately fifty feet deep. On the east platform is our work bench and electric saw for cutting lumber; materials, such as lumber, boxes, barrels, paper. My desk is in the back, as well as the stencil cutting machine, boxes, barrels and things for packing. I have two sets of band iron tools, saw, hammers, crow-bars, pinch bars, nail pullers. There is band iron and also signode strips or seals.

The south platform is approximately seventy-five feet long, and about forty feet wide. It runs from the packing room platform to the rear of the front office. The passenger elevator is in the east end of the office, in the front. The freight elevator approximately two-thirds of the distance from the front of the building. That is, about two-thirds of the distance east of the front of the building. It is on the edge of the east platform, about one hundred

[fol. 485] feet from the front door. There is one freight elevator and one passenger elevator. I operate them at all times. It is strictly against the rules to permit any outsiders to operate them.

The cubic foot content of the entire building is between 450,000 and 500,000 cubic feet. The driveway is possibly one hundred feet in area from the east platform or packing dock to the front door. Alongside the office the driveway itself is about fourteen to sixteen feet wide. Where the building juts out in back of the office, it widens to I would say twenty or twenty-two feet. It is this width for approximately sixty feet, that is from the back end to the front office. I can accommodate four vehicles of any type at one time. There is space to back one into the elevator, one into the back east platform, and two into the south or side dock.

There are two and one-half floors of open storage. This means that one deal is piled next to another. After a deal is checked in, it is set up. By checking a deal in, I mean we list each and every piece as it comes off the van or wagon. If I am too busy, Mr. Carroll comes out and I call it off to him. Otherwise the driver or helper of the truck will help me. We scrip every piece and put a tag on it. It is then taken to an elevator and placed in an open space. There are only two men employed at the Empire, except for about six weeks of the year. Our business is seasonal. May and October are usually rush periods. The rush periods average three to four weeks. The two men that are at the warehouse are Dan Carroll and myself. Dan Carroll is office manager. The only time he ever assists me is if I have two or three trucks that are unloading, when he may go out and help me scrip a load. By that I mean tag each piece with a consecutive order number as it is taken off the truck. The only other time Mr. Carroll might help me, would be if I was upstairs and a load came in, he would tell them to throw it off the wagon. Mr. Carroll takes care of the office and is my superior.

The open storage rate is one and one-half cents per cubic foot. Room storage is one and three-quarter cents [fol. 486] per cubic foot. This has been the prevailing rate for the past twenty years. There are three floors of closed storage. There are sixty-six rooms to each floor. They vary

from 400 cubic feet up to 1000. All large rooms are on the north side of the building, running from the east wall to the freight elevator. From there on down, they run five, six and four hundred cubic foot rooms. On the south side of the building are seven and eight hundred cubic foot rooms. They take up possibly two-thirds of the space. The rest of them are smaller rooms, four, five or six hundred cubic feet. On each of three floors, we have five one-thousand cubic-foot rooms.

In April, 1936, I would say the building was probably eighty-five to ninety per cent full. The same was true in 1937. We were short of open storage space, because Mr. Pacente had the Museum of Science and Industry. This consumed about three-fourths of the sixth floor and possibly one-eighth of the seventh floor. I never touched the storage which belonged to the Museum of Science and Industry. Mr. Pacente handled it himself. When he brought it in, he placed it on the elevator. He had his own help with him. I would go with them to the sixth floor, where he and his men would take the goods off. I would return to the first floor, while they piled it. The only time I am in the office is at noon, when Carroll goes to lunch, or if he is on his vacation I may be there until the main office sends someone over.

The first thing I knew about this Rosen account was when a man came in to rent space. Mr. Carroll called me to the front and asked me to show him space. The room was subsequently rented. I think Mr. Carroll made the arrangements, though I did talk to Rose in regard to it and to costs. I never saw this man Rosen after that, nor had I ever seen him before. The man, who represented himself as Rosen, told me that he wanted to rent space or a room to store Rug Life fluid, a rug cleaning fluid, and that he would be shipping in and out quite often. When we came down to the office, I explained the situation to Mr. Carroll, who arranged the charges. The regular rate for room 549 was \$17.50 a month. Since he was going [fol. 487] to be in quite often, and I would have to help him take the stuff up and down, we came to an arbitrary charge of \$35.00 per month. Ordinarily we charge one-half month's storage for taking goods up and piling it away, and one-half month's storage for bringing it down to the dock. Instead of paying \$5.00 an hour for two

men, we make an arbitrary charge of one-half month's storage to take it up and I pile it away. The same is true when it is going out.

With reference to Government's Exhibits 220 and 220A I recognize that I made out the warehouse scrip. I put the lot number, name, and that the goods were brought in by an outside truck. This was sent to the main office. I would take it to Mr. Carroll in the front office, and it would eventually go, either the same day or the following day, to the main office. I am quite positive this exhibit went to the main office. I do not know who made out Government's Exhibit 220, though I presume one of the clerks at the main office. Both records were made out in the regular course of business. It is quite a while ago, since the goods described on this scrip sheet were brought in. I do not believe I could identify the person who brought them. I am quite sure that if I ever saw the man who was in at the time and was supposed to be Mr. Rosen, that I could identify him.

By these records, the account was opened on April 24, 1936. I think it was only two or three months that the man actually did business there. The account was never closed until the fall of 1936. I went in to Mr. Carroll, and stated that the man had not come very often and wondered if we should close the account. I do not know why it was not closed up. At the time I mentioned this to Mr. Carroll, it was getting near our rush season. I supposed that we would need a one thousand cubic foot room, there being only one or two available. I mentioned to Mr. Carroll that the equipment was in the room, and I thought we ought to close out the account. It did not appear that the fellow was coming back.

The only time I inspected the contents of the room was when I went up there to look for space. I usually keep a chart of every floor of the warehouse showing the various rooms and whether they are vacant or filled. [fol. 488] To the best of my recollection, when the Rosen account was opened in April, 1936, there were some boxes brought in. A day or two later a truck came in with some cartons of cans. The cartons were sealed. They were put on our dock and I put them on the elevator and took them upstairs for this Mr. Rosen. He was present when I received them. I did not at any time issue receipts for these cartons, nor did I check the cartons or other boxes

in. All I ever did on the Rosen account was to receive the goods on the platform, take them upstairs to the fifth floor, and put the merchandise in the room. I never helped Rosen pack the merchandise. The only thing I did was to take it up stairs and put it in the room; take it downstairs, if they were in boxes, put them on the elevator or dock, until the truck came to take them away. I do not recall who the person was that took them out. The cans I have mentioned were five-gallon cans in cartons. I never saw the cartons open, nor did I ever see any labels on them. I do not recall who brought the boxes in on the Rosen account. To the best of my recollection, there were from three to five shipments made under the Rosen account. I had nothing to do with these other than I have described. I did not make out any shipping orders or stencil them. We did not see the man who represented himself as Rosen. I do not think the man known as Rosen was there at all after two and one-half or three months from the time he opened the account, which was April 22, 1936.

In the Fall of 1936, Mr. Carroll called me to the front office and said that there were two men who were going to take over the business of Rug Life, Incorporated. I found these men to be Don Nelson and another person I knew as Hank. During the time the Rosen account was active, I only knew what had been told me; that the cans contained rug cleaner or germicide. I do not recall if there were any leakers during the time Rosen had the account. The only conversation I had with the man I knew as Rosen was that he told me that he was an agent [fol. 489] for some rug cleaning fluid concern—Rug Life, Incorporated. I would say there were about two or three shipments a week on the Rosen account.

After refreshing my memory, I now know that prior to April, 1936, room 549 was occupied by an outfit known as Gratsky Clothing Company. They stored men's and women's clothing. They handled it themselves, that is, they brought in the articles, put them on the elevator and I took them to the floor. They would then store them. The same procedure was followed when these articles were removed.

I have never before been arrested or been in trouble.

My recollection of Skampo and Nelson coming into the office was that Mr. Carroll called me in and told me that

they were to take over Rug Life, Incorporated. I do not remember whether it was on the same day I took them upstairs to show them the room or not. I do not think the conversation was in my presence. It was possibly a day or two later that they came back. I believe I then took them to the room and showed them the equipment, boxes and tools that were there. At that time I think there was just a banding iron machine, pincher, stencil can, stencil brush, and a metal stencil. They were similar to the exhibits that were here introduced in evidence. The only conversation that was had relative to this equipment was that which I had with Mr. Carroll about removing it. Mr. Carroll told me that he would take it up with the main office, inasmuch as the account was in arrears. This was before Dracka and Skampo came there.

When I took Skampo and Dracka to the room, there was nothing said by them about the tools. They merely looked over the room. A day or two later, they had some boxes shipped in. I do not know where the boxes came from, though I believe Charles Pacente brought them. They were new boxes and carried no identifying marks. I think it was the following day that they brought in a load of these cans in cartons. They were similar to the cans that had been coming in on the Rosen account. I took the cans to the fifth floor, and unloaded them into the room. At that time Don Nelson went up with me and I left [fol. 490] him in the room. Nelson was always present when the cans were received. He was likewise present most of the time that the boxes were delivered, though there might be one or two occasions when he was absent.

To the best of my recollection, Pacente brought the first shipment of boxes in. I never received the shipping memorandum on that. So far as I know, these boxes were consigned the Rug Life, Inc. I was told by Mr. Nelson they were coming in.

The activity of this account was similar to the other. Skampo did not appear very much after the original meeting. After I took the stuff up to the room, Nelson would start preparing it for shipment.

Since the burglar alarm system requires that the doors close at five o'clock, there were occasions when I would think that Nelson would not be ready by that time and I would holler up the elevator shaft to him. When he told

me that he would not be finished, I would go up and give him a hand stencilling the boxes to get out in time. He was always anxious to get them out the day he packed them. The only assistance I gave Nelson was stenciling the boxes. I only saw cartons in these boxes. Mr. Pacente handled all the cartage of the merchandise at that time. I do not recall whether I ever called Mr. Pacente, though it would be a part of my duty. I made out bills of lading at Mr. Nelson's request. He told me what to put in these bills. I at no time made out a bill of lading without Mr. Nelson's direction. There may have been two or three times that the boxes were ready early and Mr. Nelson would tell me to make out the bills of lading and he would leave before Mr. Pacente came to pick up the boxes. Most of the times, this merchandise came in on trucks, though three or four times it was delivered in touring cars. I never unloaded trucks. My only activity in connection with it, began after it was either on the dock or on the elevator.

I identify Government's Exhibits 218 and 218A. That is our rate sheet, which is attached to the warehouse script when a deal is received at the warehouse. When a deal comes in I get the next consecutive lot number, in this case, 15896, put the date on, the starting of the account, [fol. 491] and the name Rug Life, Incorporated. The same thing applies to the warehouse scrip. On that, I put the name of the account, lot number, date received and who scripts it in. On this particular shipment, I scripted it in. Both exhibits carry my handwriting. I made them out in the regular course of business.

Government's Exhibits 216 and 216A are the same rate sheet, and the same type of warehouse scrip. They are made out in Mr. Daniel Carrell's handwriting. This relates to Lot No. 16129, dated January 5, 1938. It shows storage rate, \$35.00. The nature of the business is not included in this, it merely says room 549.

I would say Mr. Nelson was there from the Fall of 1936 to the Spring of 1937. During this time, I would say there were four to six shipments a month. During this time, Mr. Pacente brought empty boxes, which I received. I also received some from the Norwalk Transfer Company. These were consigned to S. W. Lewis or S. W. Nelson. Mr. Nelson had told me that they were coming in. Mr. Nelson merely said that he had some boxes

coming in by the Norwalk Transfer Company, and that they were consigned under a different name. I do not recall what it was. He asked me to receive them when they arrived. This, I did. I made no inquiry as to who the consignee was on these shipments.

The only conversation I had with Mr. Nelson was that he told me that the boxes were returned from some town in Ohio, and that they were to be received under the name W. E. Lewis and Sons. He did not say why he was receiving them under that name. It is not an unusual practice for things to come under a different name, and I never question people about that.

My signature appears upon Government's Exhibit 165. That is not my signature on Exhibit 167. I do not know whose it is. I do not recognize it as that of anybody in the employ of the Empire Warehouse. My signature appears upon Exhibit 169. I cannot identify the signature on 168. The only time I really saw Mr. Skampo was the first time he was there to inquire about the room. I took him up to the room. He was there six or seven times [fol. 492] afterwards, though I never talked to him. He came to see Mr. Nelson. I would take him up to the fifth floor, where Mr. Nelson was working. I never engaged in any conversation with them. There was never any mention in my presence of the contents of these shipments.

I did not have any conversation with Mr. Skampo in a restaurant in the Fall of 1937. There is a small lunch room directly across the street from our warehouse, and then there is one down on the corner of Hyde Park Boulevard and Lake Park Avenue. There are no restaurants on the same side of the street where the warehouse is located. I never had lunch with Mr. Skampo. I have been here during the trial and I heard Mr. Skampo testify he had lunch with me. I never had lunch with Mr. Skampo. I never had a conversation with Mr. Skampo in which Don Nelson or his whereabouts were discussed. I did not know what happened to Mr. Nelson. I did not have any conversation with Mr. Skampo about the company discontinuing that practice. At no time did I make any statement to Skampo. I believe the last time I saw him was either the last part of 1936 or the first part of 1937. At that time, he came to the warehouse to see Mr. Nelson. I

never saw Mr. Skampo outside of the warehouse on any occasion.

The Rug Life account continued active until the latter part of the Spring of 1936. Mr. Nelson disappeared, and we did not see him for quite some time. There were possibly three or four boxes left in the room, the tools and other exhibits. It was around the first part of 1938 that I was again called to the front office by Mr. Carroll and introduced to two men—one of them named Al Williams and the other only as Bill. Mr. Carroll told me that Mr. Nelson had been in and consigned the Rug Life business to these two men, and ordered me to show them the room. Nelson was not present at that time. The last conversation I had with Nelson was in the Spring of 1937, when he left the warehouse. Prior to his leaving, I only had a general conversation with him. I never discussed either his business or my own with him.

I may have mentioned the amount of the storage in connection with the Rug Life account. I think Mr. Carroll had already arranged that before he called me to the office to take the men upstairs. I believe I did talk to Don Nelson about the rent. The same rent was quoted, \$17.50 a month for storage and \$17.50 a month for labor. The storage was arranged upon the basis of a one thousand cubic foot room at one and three-fourths cents per cubic foot. That was the standard rate. The amount for labor was arranged in the same manner as in the Rosen account; instead of \$1.25 every time I was there to take him up and down and handle the boxes we arranged at a charge of \$17.50 a month the same as with Mr. Rosen. I do not recall ever receiving any money from Mr. Rosen. There was never any money paid me for advanced charges for commodities. I never received any funds other than the rent money.

I had no conversation with Don Nelson at the time he ceased his activity, because I did not see him at the time. The first I knew he had ceased operations was when Williams and the other fellow came in and Mr. Carroll told me that he was taking over the Rug Life account. I believe it was in the Fall of 1937 that Don Nelson ceased his activity. I do not think the account was taken over by Mr. Williams until the early part of

1938. I do not think I had anything to do with the arrangements whereby Mr. Williams took over the Nelson account, except to show him the room and equipment. At the time I showed him the room, there were just the tools and cartons in there. It was practically the same equipment as had been left over from the Rosen account. The tools were the same.

I was introduced to Mr. Williams when Mr. Carroll called me to the office. This party known as Frank was not with Mr. Williams at that time. He came in at a later date. As far as I know, Mr. Williams came alone. I did not see anyone with him. I took Mr. Williams up to the room and followed the same procedure as on the other accounts. Mr. Williams said he had some merchandise coming in. He merely said that it was rug cleaning fluid. In a day or two, boxes came in and this other merchandise—rug cleaning fluid. I handled it the same as [fol. 494] the other account. I put the boxes from the dock on the elevator, took them upstairs, and put them in the room. If the merchandise came in, I did the same. At that time, I believe Mr. Carroll had made arrangements with Mr. Williams to take over the cartage. Prior to this, the Empire Warehouse had not done any hauling. The first time the Empire did any hauling was when Mr. Williams took over the Rug Life account. That was the early part of 1938. I had nothing whatsoever to do with the arrangements for the cartage. Mr. Carroll had handled that.

Pat Carroll is our dispatch man. He is located at 5153 Cottage Grove avenue during the day, and at night and in the morning is at the garage at 4714 Cottage Grove avenue. No doubt, I did call Pat Carroll about these shipments at Mr. Williams' request. I cannot say how often. The Empire trucks hauled the empty boxes too. Arrangements for this were made with Mr. Carroll. I did not know who these empty boxes were consigned to, since I never saw the cartage tickets on them. One of our drivers would bring them, attach his ticket that he got from the box company to the wagon ticket. This would be turned over to Mr. Carroll when he pulled in at night. I do not recall seeing any of those.

I had no conversation with the Empire Warehouse drivers about these boxes, other than that I understood,

as did they, that they were consigned to the Rug Life, Incorporated. These boxes were brand new ones. There was no stenciling or printing on them to my knowledge. I did not know the name of the consignee of the boxes that Pacente hauled, since I never saw his tickets. Pacente always held his own tickets. I only knew that they were brought in for Rug Life, Incorporated. There were no identification marks on the boxes. I never saw the memorandum tickets on those. Pacente brought in cartons. I did not know to whom they were consigned, nor did I ever see any shipping memorandum or instructions on those. Pacente held these for Nelson, in order to collect his money. To my knowledge, there was no identification marks or printing on the carton.

[fol. 495] This man I knew by the name of Bill came around there possibly six or eight weeks after Williams started in. He helped Williams get the shipments out. At that time, I did not know his last name. They were paying the same rate of storage. On one or two occasions, they asked if I could cut their storage and I referred them to Dan Carroll. Mr. Williams asked me about a reduction, though I do not recall just when it was. When they asked me, I told Mr. Carroll. I also told them I did not think they were entitled to it, and there was still as much labor required. At that time I was performing the same service as I had been for Nelson.

Johnson received merchandise four or five times a month. I do not know who brought it in to him. It was delivered mostly in a panel body Ford truck. It was not delivered at any particular time of day. No merchandise was received before eight o'clock in the morning nor shipped out after five o'clock in the evening. I do not know who brought the Johnson merchandise in; most of the time it was in a panel truck. It had been brought in in a touring car. If I saw a picture of the man who brought it in, I could identify him. Sometimes the merchandise delivered for Johnson was brought in in cartons and sometimes in just plain cans. I would take the cartons, or cans, as well as the empty boxes upstairs and put them in the room. When a shipment was ready, he would ring the house phone, I would go up on the freight elevator, and truck them down for the trucks to take out.

I never assisted in unloading the merchandise from the trucks that brought it in. In shipping it out, I possibly would roll the merchandise over to the tail gate at the truck that was there to take it away. I made out the bills of lading. I never had any occasion to help Mr. Williams with his packing. Mr. Williams did his own stenciling. I may have cut the stencils for him. I think he had the stencils made up there. I believe Mr. Nelson made the stencils.

I advised Mr. Carroll not to cut the rate for Mr. Williams. After two or three complaints, however, Mr. Carroll told me that he had reduced the rate and agreed to charge Mr. Williams Five Dollars for a hold-over charge [fol. 496] and Five Dollars for cartage. In the warehouse business, a hold-over rate refers to a deal that is brought in for ten, twenty, or thirty days. In other words, we avoid them paying anything for labor as on a regular storage deal. For example, if an apartment is not quite ready, we charge what we call a hold-over charge for this period of time. Mr. Carroll cut this account to this basis. Mr. Carroll quoted the cartage rates on this merchandise. I do not believe I had anything to do with that.

I am familiar with Pat Carroll's writing. All but four of the papers in Exhibit 221 are in Pat Carroll's handwriting. They are our regular wagon tickets. The Empire drivers received their instructions from Pat Carroll and W. L. Bishop. The drivers are given regular wagon tickets, such as Government's Exhibit 221. They are given several. On each job they are given five tickets. When they have finished their jobs, they call in to Pat Carroll. He gives them new orders over the phone. The wagon tickets are made out either at our main office or at 4714 Cottage Grove garage. When the driver comes in at night, he gives his tickets to Pat Carroll and turns in his cash. Any bills of lading are attached to the ticket and the wagon ticket. These wagon tickets are then turned over to Pat Carroll, who gives them to our clerks in the office.

Since the beginning of this investigation, I have learned that the correct name of the man I described as Al Williams is Johnson. Throughout my testimony, when I have referred to Al Williams, I am referring to Johnson.

Johnson came in the early part of 1938 and operated until the Spring of 1939. While he was there, there were leakers. I would see them on the elevator. All I did was to take the

cans to the room; and I do not know what Mr. Johnson did with them. I made no inquiry as to the cans at these times. All I knew was that the cans were supposed to contain rug cleaning fluid. I was never told otherwise. The first I knew that they did not contain rug cleaning fluid was when Mr. King and Mr. Herdrich came to our Lake Park office. That was May or June of 1939. They came together. I talked with them. They said they had [Vol. 497] come to go through room 549. Mr. Barrett had called me previously and told me that they were coming over and to cooperate with them fully. I did. I took them to this room. They entered and looked it over—looked at all of the articles in the room. The locks on room 549 were the same as nearly all of them. It is just an ordinary padlock. It was a warehouse company lock. The occupants of this room used the Empire locks. I left a key to their storage room on the light switch box on the fifth floor, so that they would not need to bother me. I carried a master key on my key ring.

During the time Johnson was there, the fifth floor was eighty to ninety per cent occupied. In 1937, the warehouses had in the neighborhood of four hundred fifty to five hundred accounts. From April through December, 1936, we had close to one thousand accounts. During that time, we stored fur coats. These come beginning April or May. From January through June of 1939, I would say we had about the same number of accounts—four hundred fifty to five hundred. Mr. Carroll and I were the only two in the warehouse, except possibly in May when we would have another man there to help me because it was rush period.

The only time I ever saw Government's Exhibit 100 before was when Mr. King brought it over to our office. It is a lease for a storage room. I had nothing to do with making it out. These are made out by Mr. Carroll in the front office. This lease was not made out in my presence. I know nothing about the circumstances surrounding it. The price Thirty-Five Dollars marked on the lease was the customary charge. It was the same rate that had been charged for the preceding accounts. There was nothing unusual about this account.

Quite frequently merchandise is stored in the warehouse under different names. Many times people, who desire to break a lease, or if they have a chattel mortgage, wish to

store their goods in an assumed name. This is true in five to eight per cent of our storage accounts. Other times people who might be buying furniture at a wholesale house in a name different than their own would send it to the warehouse [fol. 498] house. We would not know who the goods were for until the people may come in a day or two later. We would hold it until they came in. Delivery of these boxes to the warehouse created no suspicion in my mind.

Mr. Nelson, or Mr. Williams, whoever was there at the time, told me that they were coming in for the Rug Life. It was the latter part of May or the first of June, 1939, that Mr. King and Mr. Herdrich of the Alcohol Tax Unit talked to me. Mr. Carroll was present in the office at the time. Mr. Barrett had called and said that they were coming. Mr. Carroll called me in after their arrival and I took them to the room. They then took me down to the Hyde Park Hotel, one-half block from the warehouse, and questioned me. They showed me a lot of pictures and wanted to know if I could identify them. I think at that time I did identify one man. A day or two later, they came in with a photographer and wished to take pictures of the items in the room. I took them upstairs and they took the pictures. They then took me over to the Hyde Park Hotel again, questioned me for an hour, and showed me some more photographs. A day or two later, at noon time while I was in a stationery store, they came in and said they wanted me to go to the hotel again. I was on my lunch hour. I told them I would like to tell Mr. Carroll that I would be delayed. I did so, and they again took me to the hotel and questioned me about one and one-half hours. They wanted to know if I knew what was in the boxes or cans. They also wanted me to identify the pictures. I told them I was telling the truth. Mr. King said that Mr. Nelson was going to write me a letter telling me to tell the truth. I told him there was nothing more I could say. No letter came from Mr. Nelson. About a week later, they came in and wanted me to go to the hotel again. I had a customer and they waited ten or fifteen minutes for me. They wanted to know if I had an account there by the name of some caramel extract, or something. They seemed to be positive I did. I took Mr. King and Mr. Herdrich and opened my lot book, which shows the name of every account that comes into the warehouse. I told them if they could

show me anything pertaining to this account, I would be [fol. 499] more than pleased to get the file on it. They sat down and I went through the book with them thoroughly. I told them if they wanted to see my out-files on some of these accounts, I would take them upstairs to the out-file and we could go through them thoroughly in consecutive order as to the lot numbers. These covered the period of time prior to those in my book.

Mr. King said, no, they were satisfied. He also said, "I still think you have that account in here under that name." I told him I was positive I did not, because if I did, it would be in that lot book. The lot book contains information on every lot that comes in. Lot numbers in consecutive order are assigned. There is written in the name of the party, where it was received, the date of the starting of the account. They run in consecutive order. Every account we had in the warehouse is in the three books I had shown Mr. King and Mr. Herdrich. The accounts are kept numerically in that lot book and alphabetically in my file. When a person delivers merchandise under one name, stores it under another, we have to refer back to the lot book to find the address of the original consignee.

The Rosen account, the Johnson Rug Life, the Nelson account, all bore lot numbers. These lot numbers were all made in the regular course of business.

I stood with King and Herdrich while they checked the lot book. It took them nearly two hours' time. There was no discourse relative to any other accounts. A day or two after this, Mr. King, Mr. Herdrich, Mr. Campbell and another gentleman came to the warehouse and again took me to the Hyde Park Hotel. Mr. Herdrich said he wanted me to make a statement. I told him they could take one there. We had a private office in our balcony. He stated they would rather I came to the hotel, because I was too interrupted at the warehouse. I told them I was getting interrupted quite often, and that after all I had work to do. I agreed to go to the hotel and Mr. King took a statement. He asked me a question and as I answered it he wrote it on a typewriter. It was in question and answer form. It took possibly two hours that day. Mr. Herdrich and Mr. King were asking me the questions. As [fol. 500] I answered them, Mr. King took them down on a

typewriter. Once in a while Mr. Campbell asked me a question. I was not questioned relative to any conversations with Mr. Barrett. Until after the investigation started, I did not discuss this account with Mr. Barrett. In my statement, it does say, "I called Mr. Barrett, the General Manager, to ascertain how much should be charged for the room." I could have called Mr. Barrett or anybody. It is hard to state. That was in 1936. If I did call Mr. Barrett in 1936, I did not have any conversation with him from that time until this investigation. Any conversation I may have had with Mr. Barrett would have been about the rate to charge. I do not believe I ever had any discussion with Mr. Barrett concerning the circumstances surrounding this account. I never had any occasion to discuss this account with him, except as I have just described. I never told him about the activities of the account. I never knew this was alcohol before the Government men came in.

When the leakers I have mentioned were on the elevator, they were sometimes in cartons and once or twice they were opened. When I say leakers, I mean that in setting them down on the elevator, the top would be loose. When the can was set down flat the bottom would bulge and send some of the fluid over the cap on the can or the opening. When this occurred, the only comment that was made was that whoever was bringing them up might have said he would have to tighten it up.

There is a general odor of Naphthalene throughout the warehouse. This is a strong moth repellent. We use it throughout the building both in liquid and crystal form. It is used primarily in moth-proofing, and then twice a year we distribute it throughout the building. We also use Konate moth destroyer. We fumigate with this liquid. This is done sometimes fifteen times a month. All incoming upholstered furniture and rugs are moth-proofed at all times. Though people who are storing their goods do not want to pay for this service, I usually put a little on for our own protection.

About once a month we have auction sales, when we sell goods that are held for storage charges. I attend all of our sales. I go over there for two days to make up the bills for [fol. 501] the sales of the auction. I have to have the bills ready at night, so that when the people are ready to leave they can pay. The next day I have to be there so if there

is a balance on the account when the people come in to receive their goods, I can check it, mark the receipt paid, and give them their bill. We hold an auction once every two months. No one operated this elevator while I was present in the warehouse. There are instructions to this effect.

Dan Carroll gets orders at 5041 Lake Park avenue from the main office. He in turn gives them to me. All of my services in connection with this account were indirectly under the supervision of Dan Carroll. I had nothing to do with fixing the rate for cartage. I had nothing to do with the reduction in rent. I believe Mr. Carroll took this up with the main office, or he may have taken it upon himself. I was not present when he gave Mr. Williams the cut in rate.

In the statement I made, there is reference to leakers and also that there was an odor throughout the warehouse similar to formaldehyde. Mr. King and Mr. Herdrich asked me what the stuff smelled like. I told them that it smelled like formaldehyde. They wanted to know how I was familiar with the odor of this, and I told them that while I was in France we camped next to a base hospital and that the odor of formaldehyde was strong around there.

I did tell Mr. King that I thought it unusual the way the men carried on the business, and that they might have been handling something other than cleaning fluid, but I never asked nor was I ever told what they were handling. I did not know it was alcohol. The only time that my suspicions were aroused was once in the Spring of 1939, when I saw Mr. Williams and this Bill near my desk in the packing department. Mr. Williams was asking someone over the phone if there had been any sales tax agents around. I thought that perhaps these men in shipping the goods out of town were in some way dodging an Illinois tax or some other state tax. When I approached the desk, he hung up the phone. I made no inquiry of them at this time, and they made no statement about this conversation.

[fol: 502] I do not believe I ever called the Roadway Transit Company relative to this merchandise, though I did hear Mr. Chambers testify. I talked to Mr. Chambers one time when Mr. King and Mr. Herdrich were in the warehouse. That was the occasion they told me I had lied to them when I said I never called the Roadway Transfer Company. Mr. Barrett was in the office at the time. He told me

to call the Roadway and ask for Mr. Chambers in my normal voice. I did so. I told Mr. Chambers that I had a crate of chairs going to Cleveland and wanted to know if he had room on the six o'clock truck that night. He said, "Who is this talking?" I said, "How about this shipment, could you handle it?" In response to his further inquiry as to who it was calling, I said, "don't you know who is talking?" To which he replied, "No, I don't."

I don't believe I ever talked with Mr. Chambers before this time. I talked to him since we met at the trial here. I never made any phone calls to the Roadway. The only discussion I ever had with Dan Carroll about these accounts was at the time I opposed the cut for Mr. Williams.

During the time I have been with the Empire Warehouse, I have handled around fifteen or twenty chemical accounts. When I spoke about helping Nelson pack, I did not mean that I ever actually assisted in packing the boxes. I helped him stencil them so he would get out of the building on time.

An open account is where people have goods in storage and they visit it five or six times while it is there. Regular storage is kept for a long period of time without the persons disturbing it. There are both open and closed accounts in these storage rooms.

Cross examination.

By Mr. Hopping:

I am not a stockholder of the Empire Warehouse Company, nor am I related in any way to either Mr. W. B. Carroll, or Mr. Dan Carroll. I am not related to any of the directors of the warehouse company. Mr. Dan Carroll is the only one I discuss any business that I take into the warehouse with, except when one of the officials come over to question me about some deal.

[fol. 503] Mr. Barrett has been general manager of the company about eight years, I think. Occasionally, I discuss the business with Mr. Barrett, though this did not happen very often. Occasionally Mr. Barrett has called me up to reprimand me for failing to do some of my duties. He is the active general manager. If I saw anything I thought was wrong, he would be the man to take it up with.

If I saw anything unusual in the warehouse, which I thought might affect the business, I think I would take it up

with Dan Carroll first. When we speak of unusual things such as damage or breakage, I take it up with Dan Carroll. I have not had occasion to take these matters up with Mr. Barrett. My only interest is that of an employee at the Lake Park Branch, which is referred to as the Empire. It is customary to refer to that branch as the Empire or Lake Park unit. I may be hazy about some of the things that I testified to today, because it does require going back four years. To the best of my knowledge, I think I told the truth. I am pretty sure that I have testified to the best of my knowledge.

At the time this investigation started, I had to refresh my memory on a lot of things, so my recollection today may not be the same as at other times.

The man I knew as Al Williams handled the Rug Life account from January, 1938 to June, 1939. I knew him only by that name until the investigation started in January, 1938. I never referred to him as Don Nelson. The man I knew as Bill did not come in with Al Williams, but later he was around there in connection with Al Williams. I have not had occasion to refresh my recollection as to the name of that man. I did identify a picture of someone as the Al Williams I knew, when it was shown to me by Mr. King. At the time I made the statement to Mr. King, which is Government's Exhibit 222, I told him everything I then thought I knew about the Rug Life business. In that statement, I did recall one of the men Al. I am not positive whether I told Mr. King his name was Al Williams, but I am pretty sure I did. It does not appear in this statement, and I did read it over before I signed it. I did not pay any particular attention to whether the name Williams was in there or not [fol. 504] From looking at the records, I would say that I received empty boxes consigned to W. E. Lewis & Sons about three times. I do not remember seeing the boxes.

Mr. King showed me the tickets and it did refresh my recollection of receiving these boxes. I am pretty positive that I took them, because Don Nelson told me that he received them. I don't think that I am mistaken on that.

The last time I saw Don Nelson, that is the man here known as Clarence Dracka, was I believe the Spring of 1937. It was while he was still shipping Rug Life. I have not seen him from that time until we came up to this investigation. I have never talked to him at any other place than

the warehouse, nor have I talked to him on the telephone.

Exhibit 169 is a delivery ticket of boxes for W. E. Lewis & Sons and bears my signature. I think it is a shipment I received at the request of Don Nelson. The date on here is January 7, 1939. Don Nelson did not tell me to receive these; Al told me. Evidently, I was mistaken when I said Don Nelson told me. The same is true of my signature on Exhibit 167. I don't think I was told by Don Nelson to receive any boxes in the name of W. E. Lewis & Sons, now that I see these tickets. I must have been told by Mr. Williams. All I can say is that if that was the time Mr. Williams was there, either he or the man with him told me they were coming under that name. I admit I was absolutely mistaken when I said Don Nelson told me.

I am not mistaken when I say I have not seen Clarence Dracka since May, 1937. It is true that Dracka came to the warehouse with Al Johnson and turned the account over in January of 1938. I did not see him at that time, nor did I see him go up to the room with Dracka. I did not go to Mr. Carroll's office at the time this lease was signed in the name of Don Nelson. I never saw it until it was brought up in this investigation. I am sure of that.

I never saw Henry Skampo after January, 1938, when Al Johnson took over the business. I have not at any time stated that I saw him. I do not recall a conversation in this building in the United States Attorney's office on the [fol. 505] morning of May 14, 1940, which was the first day of this trial. I do not believe I there said that I had a conversation with Henry Skampo in January, 1938. That conversation was with you and Mr. Hinton. I do not think Mr. Cavanagh and Mr. Fischer were in the room at the time. If they followed me into the room, I did not see them.

I recall you asking me something about Skampo coming to the warehouse in January, 1938. I said I never met the man at that time. I do not recall ever saying that I had not seen him in the restaurant, but that he came into the warehouse and asked for me.

At the time Don Nelson took over the Rug Life business in November, 1936, Mr. Carroll introduced me to him. I do not recall receiving any message stating that two men would take over that account, unless Mr. Carroll told me he had received such a message.

I knew a man named J. Rosen, though I do not know his correct name, or have I seen him since. I have never known this man by any other name.

We do not have a credit association investigating customers of the warehouse, unless an account runs up to a large sum, or someone wants to move and charge the account. We do not require credit references for the tenants of the warehouse.

As to whether J. Rosen gave an address would be up to Mr. Carroll. I handled his goods while he was there. I never found out where his headquarters were. When he left, it was an open account. He operated there from April to November, 1936. When Clarence Dracka came, the account was overdue from July to November. When Dracka came to take over the account, I did not identify the J. Rosen, who had had the account. The only one, who might have done so, would have been Dan Carroll. There were materials left belonging to J. Rosen. I allowed that material to be taken over by Clarence Dracka as his own. As far as I know the warehouse would be liable for this. The only effort to find out if J. Rosen had turned these over to Clarence Dracka was what Mr. Carroll had told me. I did not take it up with Mr. Barrett.

[fol. 506] When I use the term "main office," I mean the Bookkeeping Department, Mr. Barrett's office, and the president. It does not mean Dan Carroll's office.

In my statement, I did say that in the year 1936, I received a call from the main office about two men coming to negotiate for space. I do not know whether those men were Dracka and Skampo. I wouldn't say the "two men" in the statement refers to Dracka and Skampo. I think that refers to the Rosen account, because I hadn't found the Rosen account file. I believe I did receive a call from the main office when the Rosen account was opened, though I do not know who called. It might have been anyone of the office force. I believe two men came in when I opened the Rosen account. I did not talk with anyone at the main office about this account, except that they told me the *the men* were coming over and I showed them the space. In my statement, when I said that in 1936 I received a call from the main office about two men who were coming to negotiate for space, I referred to the Rosen account, which was started at that time. As set forth in the statement, upon their ar-

rival Dan Carroll called me and I took them through the warehouse. They selected room 549.

Also, that portion of the statement that the regular price for that room is \$17.50 a month, plus one-half of that when the goods are brought in and one-half again when they are removed, is correct. That does apply to the original renting of this room, because at that time we hadn't found that file. I said in my statement that these charges were for handling, storage and the removal of goods, and that the men explained that they were going to bring material in and ship it out, and I called Mr. Barrett to find out how much would be charged for the room. That is correct.

These men told me they were going to box and ship rug cleaning fluid, and I explained the whole situation to Mr. Barrett. I talked to Mr. Barrett in April, 1936 about the Rosen account. I do not know exactly when this account was opened. The records show April 24, 1936. It would be about this time I talked to Mr. Barrett. The men told me they were bringing in cartons to ship out. They said the cartons would be put in the room, and in turn they would get boxes, pack them and reship them. They said it was the [fol. 507] rug cleaning business. I do not believe I made out bills of lading for the Rosen account, because we did not haul the goods and they never asked me.

We make out bills of lading for other goods than those we haul. The reason I did not make out any bills of lading for the Rosen account was because they handled it themselves. It is part of my duty to make out bills of lading if the tenants ask me. On our own shipments we make out the bills of lading. If a customer requests us, we make them out for them. On the Rosen account I believe they took their own stuff out and made out their own bills. I understand one of the bigger trucking companies hauled their stuff to the Roadway. If I am not mistaken, I think it was Cushman. At least I know Cushman hauled for them. I do recall that a Cushman truck came and took the first shipment of the Rosen account. I did not state that in my written statement, though I believe I told Mr. King and Mr. Herdrich. I did not call to his attention the fact that it was not in the statement.

I would not say that the canned liquids for the J. Rosen account were brought in all kinds of private cars. They used a steel body truck and a sort of red truck. To my knowledge, there were four or five men, who brought

the canned liquids for this account. I did not talk with Clarence Dracka about this when I rented the place. I never talked to Clarence Dracka. When J. Rosen had the account, five, six, or seven men were running in and out of the place. They were coming in to meet Rosen and the other fellow with him. These men would come in and I would have to take the elevator up and down, and I told Mr. Dracka I did not want this to happen when he took over the account. That is not the reason I called Charles Pacente to do the hauling, because I did not call Charles Pacente. I do not know whether Mr. Carroll did or not. All I know is that Mr. Dracka testified here in court that he went down to 53rd street and got Mr. Pacente himself. I do not know Pacente hauled in and out.

Mr. Nelson wanted to get the shipments out in the afternoon. They were usually late. I asked Mr. Carroll about this, and he called Mr. Pat Carroll. This was during our rush period. Carroll said we could not handle it because [fol. 508] the quoted price was too low. If we had to take the goods out after five, we would have had to pay time and a half. This requirement was not made in the beginning, before I knew whether they were going to be late or not, because they came in during our rush period and we could not haul it at all.

I never tried to get Don Nelson to use the Empire Warehouse truck. In the statement I did say that it was decided to charge \$35.00 a month, and that I quoted this price for the room which was rented under the name Rug Life, and that one of the men was known to me as Don Nelson. At the time of that statement, we had not found the Rosen account. I thought Don Nelson was the first to handle the account. Later I searched the files for Mr. Barrett and found the Rosen account, which he, Mr. Barrett, turned over to Mr. King.

That portion of the statement in which I said, "The other I knew only as Hank and he did most of the talking," is wrong, in that I thought Don Nelson and Hank were the first two we rented to. I thought this until we found the other file. It was a period of two and one-half years. I checked the Empire Warehouse accounts when Mr. King and Mr. Herdrich went to Mr. Barrett's office. I do not recall the date, but it was a short time after the investigation started. I think it was in June, 1939, that I showed them the room after Mr. Carroll had called me. I checked

the files I had at that time. That statement was made August 1, 1939. I found the other file after that. By the other file, I mean the Rosen account.

My recollection is better now than it was at the time I made the statement, because I have refreshed it as different items were brought up. I took an oath and swore to the statement. I have not told any Government officer up to this time that the statement was incorrect. I really believe that Don Nelson and Hank Skampo were the first ones there. That is not my best recollection at this time. After the Rosen account was found and turned over to Mr. Barrett, who in turn took it up with King and Herdrich, my recollection is that the first part of that account was under Don Nelson and Hank.

[fol. 503.] Government's Exhibit 216A is Mr. Dan Carroll's handwriting. It is lot number 16129 of the lot record book I keep. Mr. Carroll keeps the lot record in the file at the office. I make the entries. Mr. Carroll took the number from my book and entered it on the warehouse scrip. Exhibit 216 is in Mr. Carroll's handwriting. This is not part of his duties, but many times I am too busy and he will make the rate scrip. On this occasion, Mr. Carroll called me in and told me that he had out the rate scrip and sheet. I am sure this happened, though I could be mistaken. I know this because if he had not made it out, I would have had to make it up. I was confused when he made it up. I did not tell him that this was the same Rug Life outfit that operated under the name Don Nelson, because he knew it himself. I do not know why the same lot number did not appear. If there is a lapse of activity between two rate sheets, or someone takes over an account, we make another lot number. It would bear the same lot number, if there was no lapse, or if it was not turned over to some other party. This was turned over to Johnson to run for Nelson. It should not bear the same lot number, because when an account is turned over to new people there is a new lot number. I do not believe Nelson had anything more to do with it after January 15, 1938. That is my explanation of the new lot number. I did not have to tell Mr. Carroll that this was the same Rug Life business, he knew it himself. He evidently talked to someone about it. I don't know that he did. I was not there, though I assume that he did:

It was not my job as warehouseman of this unit to know if we would have the same tenants running the same business. That would be up to Mr. Carroll, unless he was out and I happened to be in the office myself.

Looking at lot number record for Rug Life under Al Johnson, January 5, 1938, lot number 16129, and comparing it with the account that ran under the name of Rug Life from November of 1939 under lot number 15896, it appears to be the same account under the name Rug Life, but it would not be the same account under the lot number. The reason for the different lot numbers was because we started with two other people handling the account. This [fol. 510] may have been filed away in 1936. In the warehouse scrip for Rug Life, lot number 16129 is filed in a separate file. The way I would check back would be not by looking at the lot number, but to go back to Rug Life in the record book or in the file. They were listed under the name of the tenant. I could tell pretty accurately by looking at Rug Life who ran it from the first day they came in there. I have a record of it. I did not show this to Mr. King the first time he came, because I did not remember it. That is not in the same record. It is a distinct different file.

I now know these people were shipping illicit alcohol. The first thing that was unusual was the conversation I heard when Johnson was calling someone to see if there were any tax men around, in the Spring of 1939. I did not put that in my statement, though I have known it all the time.

I was given a copy of the statement I made to Investigators King and Herdrich and have had it for my use and reference since then.

There was no particular difference in the manner in which I handled the boxed alcohol from April, 1936, until June of 1939. Cushman trucks hauled it during the time the Rosen account was there. To the best of my recollection, the Cushman trucks hauled five or six loads. I did not handle any bills of lading for these shipments. That is the only part of the shipments on which I did not make out bills of lading.

I did not know that some of those early shipments were described as rugs. I have not seen any of the bills of lading or delivery tickets among the exhibits which show them

to have been described as rugs. To my knowledge the only description of the merchandise used in shipping was rug cleaning fluid. I was always told to so describe it. To my knowledge, I never filled in any bill of lading describing it as rugs. In my experience as a warehouse man, I have never personally used rug cleaning fluid. I have stored up a lot of furniture while with the Empire Warehouse and among it rugs.

I knew Mr. Pacente quite well. There was a practice between our warehouse and him, whereby he would bring in business if he had a chance; in return we would give [fol. 511] him cartage business. The only time we gave Mr. Pacente any business was possibly in a rush season, when we had a small job we could not handle. Otherwise, we encouraged the use of Empire trucks.

I do not know why the first Rug Life shipment did not use either Mr. Pacente or the Empire warehouse trucks. During the Rosen account, the alcohol was brought in by four or five different men. I did not know any of them, nor do I now know who they were. I think the Cushman Cartage hauled most of it out. I do not recall any other outfit taking it. One of the automobiles that brought the alcohol during the time of the Rosen account was a steel bodied truck and the other sort of a red truck. I do not recall at this time whether there was any printing on the steel bodied truck, or not. On the red truck, there was something like American Screw Works. That was during the time the Rosen account was operating. It was a red Dodge truck with a panel body. The truck pictured in Government's Exhibit No. 99 is like that truck. I could not state the exact date that this truck shown in Exhibit 99 delivered alcohol to the warehouse. It did not bring alcohol there during the time Al Johnson and Bill were operating the Rug Life business. I am not sure whether it brought alcohol there while Don Nelson was operating or not. I could not say how many times the truck pictured in Exhibit 99 brought alcohol to the warehouse. I think I would know the driver of that truck if I saw him. I have not seen him since that time. I did not see him last December when I was in Detroit. I never knew his name, nor have I spoken to him. I have not seen anyone in the court room that I saw driving that truck.

To the best of my recollection, the alcohol that came in the truck was most of the time in cartons. I would not positively state that it was sometimes brought in plain cans.

At the beginning of the Rosen account or the Nelson account, it was always in cartons. At least, around April, 1936, it was.

I am not positive whether it was later that it started coming in on the truck which is pictured in Exhibit 99. I would not say positively that this truck was later than the Rosen account and the Nelson account. To the best of my [fol. 512] recollection, when it was brought in the truck pictured in Exhibit 99, it was in cartons. I would say it was around the middle of the time that Mr. Nelson was handling the account that they started bringing some in in plain cans. After that some was brought in plain cans and some in cartons.

I took the plain cans from the loading dock to the fifth floor. At that time, I did not know what the liquid inside smelled like. I do not remember having smelled it. I only knew it to be rug cleaning fluid. I knew this because Mr. Nelson and Mr. Rosen had told me. Up to that time, there were three people I knew of who operated the Rug Life business. There was Rosen and another man and Nelson and Hank. The first account was operated under the Rosen account. Rug Life, Incorporated, followed. As to whether it was shipped out under the Rosen account as Rug Life is unknown to me, because I did not handle the bills of lading or anything else in connection with that account.

I got pretty well acquainted with Clarence Dracka while he was in Chicago as a customer of ours. I only met him outside the warehouse on one occasion to my knowledge. I played bridge with him one time at my home. Some mornings I would ask him, or he would ask me, to go to the restaurant for coffee and a roll. On these occasions I did not particularly talk with him about the Rug Life business. I never asked him for some of the rug cleaning fluid. I never asked him what kind of business it was used in. He never told me anything about what they were using it for. I do not recall that I knew they were sending it all to one place at that time. Up to that time it had been sent out of there at various times. I could not tell which consignee, or whether it was other than Star Products, 3454 Mack avenue, or not.

Up to the time I was going to breakfast with Don Nelson, I could not positively say that I recall alcohol being addressed to anybody but Star Products. I did know that it had been consigned to the Perfect Carpet Cleaners. I could

not say when that was done. To my knowledge I never saw any of the rug life cleaning fluid sold around Chicago. I never saw anyone buy it of Don Nelson or anybody else in [fol. 513] the Rug Life business. I never saw it used to clean rugs. I have a family and keep house, and I have my rug cleaning done free of charge.

Among the tenants of the warehouse, there are some who desire to have their rugs cleaned. We send them to the cleaners. I never tried to help Don Nelson extend his business by selling to these people. I do not know whether rug cleaning fluids are inflammable liquids or not. I never clean my clothes. I am not familiar with the kind of material that is used for cleaning cloth. I surmise they make cleaners out of gasoline and light oils, but I do not know. I presume they would be inflammable if they were made out of gasoline. When they called this liquid rug cleaning fluid, it never occurred to me that it might be an inflammable liquid. I imagine that there are inflammable liquids stored in the warehouse many times. So far as I know, we are permitted to do so under our insurance. I have never been told differently. We never pay any attention to whether we store explosives or not. Usually explosives are in boxes and baskets that people take out of their chests at home and put in storage. We do not remove them, merely leave them in the baskets or boxes. We store cleaning fluids if they are in the deal as household goods. If they are explosives, we do not remove them. In other words, I have never investigated to see whether they were explosives or not.

The reason for the rule preventing anyone but the warehouse men operating the elevator was because sometime ago a lady was injured on our freight elevator. At that time it was operated by a green helper and he slammed the door on her. A law suit resulted. It was as a safety measure, therefore, that this rule was made. Our new inspector requires it now to protect us against liability and loss.

I believe the rug cleaning fluid was moved from can to can on the fifth floor. The doors to the rooms on this floor are closed unless the door of his room would be open while he was working there. I do not think it would be possible for a spark to come off these metal doors when they swing back. The thought never occurred to me that there might be an [fol. 514] explosion. So far as it making any difference if I had known whether there was gasoline there or not, I can

only say that we keep our trucks in there and they are full of gasoline. The trucks are kept on the first floor in the garage.

The rug cleaning fluid was usually brought in and taken out the same day. This was not always true. They send from four to six boxes on each shipment. That would be from twenty-four to thirty cans. I do not recall if we had any other account which brought in cans of liquid and sent them out the same day. I do not know whether our license as a public warehouse authorizes us to run a manufacturing business in there. I do not know whether what they were doing amounted to manufacturing or not. We have manufacturers in our warehouses.

On those accounts, where they did manufacture, I took them up with Mr. Barrett if Mrs. McShane was not there. I believe I took this Rug Life business up with Mr. Barrett in the first instance. I explained to him that these men were going to bring some cartons, and that they had rented one of our rooms, and that they were going to box and reship them. He said it was all right. I told him it was rug cleaning fluid. I did not know where they were buying the fluid. I did not think it any of my business.

I have lived in Chicago quite a few years. I have seen another manufacturer in our 40th street warehouse rent one room in the warehouse to ship out his product. I have seen where they only ship out one can at a time. That might be one gallon, five gallons; or fifteen-gallon drum. I would not say that they took it into the warehouse and right out again.

It was not unusual that they would bring in boxes and cartons and plain cans and take them right out again, because they did not take them all out at one time. Most of the time they did, other times they would lay there for a week or two weeks. That is cans and cartons. They would be the same kinds of cans as they shipped out. From what I hear, they were all cans of alcohol.

The only thing I ever received from Don Nelson was on about three occasions after I had helped him stencil boxes [fol. 515] he gave me a dollar and told me to have a cigar. I would not say I performed extra services for the Rug Life people, other than I would for other tenants, though. I possibly did put in more time on that account than others.

We had a packing room by my desk on the first floor. I did not pack all of the things that were shipped out down

there. I packed on the floor in the building. I had strapping tools and seals.

I saw the Rug Life alcohol being boxed with signode straps and seals in room 549. After the Rosen account had shipped alcohol from April 22nd until about June, there was a period when they were not using the room. I went to Mr. Carroll and said that I thought they ought to close the account. He said he would take care of it. That was possibly two or three months after they quit using it. I believe it was just before our fall rush. At that time I thought we could use the room, since we only had fifteen one thousand cubic foot rooms there. I testified yesterday that I thought we might need that room. If I testified that I did need the room, I was mistaken, because the rush was not on yet. I am not sure that we did need the room. I would say that when I went to Mr. Carroll the room had been lying idle from about June to September. The rent had been accumulating during that time. At the time I talked to Mr. Carroll, I did not know whether the rent had been paid or not. He told me that it had not been.

Though I saw the signode tools in the room I did not know whether they were leased to the person using them or purchased. I did not know the system of leasing these tools until I came into this court room. I knew that the people who operated the Rosen account brought those tools with them. I made no effort to communicate with the Signode Company to see who owed the warehouse.

The room was idle until about November, 1936. Nelson and Skampo then came in and started to use the room to ship alcohol in the same way. Mr. Carroll handled the charging of Nelson and Skampo for the arrearages of the room up to that time. He told me about that. I would not say that this was unusual, that is to charge a new tenant for the back room rent of a previous tenant. After all, we pulled deals in the warehouse. Possibly they haven't been [fol. 516] paid for twenty-five months. The deals may relate to any commodity whatsoever, that is merchandise in dead storage.

I testified yesterday that about every two years we take it out and sell it for back rent. We have sales about every two months. On those sales we sell merchandise which has been held and not called for.

In the Rug Life account, the only thing there to guarantee the rent were the tools and empty boxes. I did not

regard the tools as security for the rent. There were about six or seven empty boxes. They were worth about a dollar and a half a piece. If they had been held as a guarantee for rent, it would have only amounted to about eight to ten dollars. That is the only guarantee we had for the collection of back rent.

I do not know if it was unusual for Nelson, the new tenant, to pay up the back rent of the Rosen account. I do not handle the accounts. I have known cases where a relative or someone would come in and pay up accounts of other people, or where a friend came in and paid the account and then would take a chattel mortgage on the household goods. Nelson quit using the room in May, of 1937. It was then idle until January, of 1938. During that time I probably examined the room once or twice. I saw the tools and four or five boxes in there, also empty cans. During that eight or nine months, I did not clean out the room, nor look into the rug cleaning fluid. The only security for the rent during that period was the tools and boxes and equipment. I did not call up the Signode Company to see who they were selling or renting the tools to. When Nelson rented this room, all this equipment was there.

I do not recall hearing Nelson testify that the tickets from which he found out where to order boxes and cartons were also there. I went into the room with him when he looked it over. At that time, I saw the tools and equipment. To my knowledge, the names of the box companies were not then there. At least, I did not see them or sales tickets.

I do not recall whether I was on the platform at the time Mr. Pacente called to find a place to buy the steel strapping [fol. 517] for Nelson or not. Nelson had been in our packing room a good many times. He saw me use that same kind of strapping there.

Mr. Carroll required the new tenant to pay the back rent from May, 1937, to January, 1938. He told me about it at the time. So far as I was concerned, it was not unusual to do that twice, because it made no difference to me. I have often seen people come back and pay up accounts of friends or relatives. That is not unusual in our business.

The Empire Warehouse trucks were used to ship the Rug Life alcohol after Al Johnson started using the room. Mr. Carroll made the arrangements with him for use of the warehouse trucks. I knew it after the arrangements had

been completed. I do not recall ever receiving money to give the driver who was to pick up these boxes. The money I received from Al Williams was for a storage account and possibly his cartage. I would turn this over to Mr. Carroll, or make the cash receipt myself and give the duplicate money to Mr. Carroll.

I am quite sure that at times I phoned orders to Pat Carroll for the Auto Van Removal Orders to be issued to the drivers. I do not know whether they show that they were paid for in advance or not. I have not seen the majority of them.

The removal order in Exhibit 221, dated January 5, 1937, which is marked paid, "P. C. \$5." was received by Pat Carroll. It does not necessarily mean that someone went over and paid Pat Carroll before the shipment was hauled to the Roadway. It could have been given to the driver who in turn gave it to Pat. Pat would mark it paid. Our drivers collect from tenants in the warehouse when they pick up deliveries. This record was made out before the driver came to Lake Park. It is in the same writing as the rest of the ticket. As to whether the writing, "Paid, P. C." was put on before the driver came to the warehouse, I do not know, though I would say that Pat Carroll would have received that money at that time and would have marked it paid when he made out the ticket. He hasn't got the five dollars for it. I doubt very much in [fol. 518] that case whether he did or not. I imagine there were times when these payments were made for the delivery of alcohol by our Empire trucks, when I took the money as well as when Mr. Carroll took the money, or it may have been paid the driver. I imagine Mr. Williams gave the money to me to pay for these shipments. I recollect on some of the shipments I did receive the money. On the one which says, "Paid, Empire," it could have been paid to Dan Carroll or to me. The same is true on the one which says, "Paid, Lake Park." This one I think says, after paid, "P. C." It must have been paid at the garage. There is one here which says, "Paid, Dan Carroll." That means that the money was paid to Dan Carroll, and I do not know any reason why it should have been marked, "Paid to Dan Carroll." Those which say, "Paid, Lake Park" or "Paid, Empire" could have been paid either to Mr. Carroll or myself.

The bill of lading dated April 3, 1939, is in my handwriting. It shows Rug Life, Incorporated, from Chicago, shipped to Goddard Products, Carbaugh & Son, Cleveland, Ohio, ten boxes of rug cleaning fluid, 2500. I wrote that. The second sheet is a carbon copy of the same bill of lading. There is also a third copy, one evidently didn't go where it was supposed to. I do not know how the second and third sheets happen to be in the Empire Warehouse files.

There was no regular method for taking payments for the shipments and issuing orders for delivering it to Roadway. If I happened to be on the platform and Williams came down, he might pay me the cartage. If I was not there, he would go to the office and pay Mr. Carroll. If the driver was there, he might pay him.

I do not know whether that portion of my statement in which I state: "When the cans and other materials would be delivered to the warehouse, I would put them on the elevator and take them to the fifth floor. Sometimes I would put them into room 549; other times Nelson would put them in the room. Sometimes I would help Nelson put them in the room. When a shipment was ready to go out, I would put the boxes on the elevator and take them down to the loading dock where they would be loaded onto a truck and hauled from the warehouse," applies to the time Nelson [Vol. 519] was running it or not. At the time the statement was given, we had not located the Rosen file. At that time it was my honest belief that Nelson handled it at the beginning. I had forgotten about anyone by the name of Rosen. After King and Herdrick wanted to know who had occupied the room before Rug Life, I went through every file over there from 1930 upon Mr. Barrett's instructions. While doing this, I ran across the Rosen account. I called Mr. Barrett and told him that here was a party we had forgotten about. He came over to the warehouse and picked up the file, then called Mr. King and Mr. Herdrick to whom he gave the file. That is the same file I called Mr. Barrett about at the time it was rented. That was under Rosen, not Rug Life. It is the same account that Nelson paid the back rent on when he went in. It is the same account that I said Mr. Carroll knew was the same people.

Though I said in my statement that I helped Nelson pack the boxes, stencil them, and make out the bills of

lading, I do state that I never packed them. The only thing I ever did for Mr. Nelson was when I thought he was going to be late in getting out of the warehouse I would go up and stencil them for him. I never packed them. I made the statement as it appears here. When I said in the statement it was my belief that Nelson was handling the Rug Life business in the warehouse and Hank was handling it at the point of destination, I set forth the impression that I received when Dracka and Skampo came in. I heard them talking about it. I heard one say to the other that he would be in Detroit or wherever the consignment was going. When I said in the statement that Nelson continued to handle the business alone until April, 1938, it should have been April, 1937. When I said that since that time he had not been in the warehouse, I meant Nelson.

I did state that after Nelson disappeared, there was a period of three or four weeks during which no one representing Rug Life appeared at the warehouse. When I then said in the statement that two men came to the warehouse stating that they were taking over the Rug Life business, I referred to Al Williams and Bill. Al Williams is Al John- [fol. 520] son, the defendant, and Bill is Bill Bagdonas. The statement is as I made it and as I recollect it now, except that I do not recall packing boxes; I did stenciling for them. I knew that I had stated in there that I had assisted in packing. I never corrected that error until this trial. There is no reason why I now say the statement is in error. That which I stated in August, 1939, may be true in that there is a possibility I did once or twice. As to that point, I would say my recollection was better in August, 1939, than it is now. I would not now positively say that I did not assist in packing this alcohol. I would say that if I made the statement to that effect in 1939, it was true as I then recalled it.

I did set forth in my written statement that the cans were delivered in a truck bearing the sign "American Screw Works" or "American Screw Company." I would not say it was unusual for rug cleaning fluid to come from a screw company, because a man might be a contract hauler for a screw company and have other contracts, too. I did state that the cans were delivered in four different cars, which I described. At the time it did not appear to me to be unusual that the same kind of rug cleaning fluid from

the same company would be coming in these different cars. I have never seen the man I referred to in my statement as being about thirty-five years old, either Italian or Jewish, six feet tall, weighing two hundred pounds, dark complexioned and with a cauliflower ear.

I heard Clarence Dracka testify that alcohol was brought to the warehouse by Morris Frank. I don't think I saw that, though I did see Morris Frank at the warehouse. At the time I saw him, he was talking to Clarence Dracka on the back platform. I would say I saw him two or three times. It was the same Morris Frank who is a defendant in this case. I do not recall whether I saw any cans delivered at the time I saw Morris Frank talking to Clarence Dracka. I do not recall whether I took cans up in the elevator right after that. I do not know what Morris Frank was doing in the warehouse, because I do not know his business. I really did not see what kind of a car he came in. To my knowledge, he was not in one of those passenger cars I described as bringing the cans of alcohol.

[fol. 521] I have seen the contents of leaking cans transferred into another can in the room upon one or two occasions during the entire period of Rug Life. When I mentioned in my statement that I thought it unusual the way the men carried on the business, I referred to the occasion when Mr. Williams was talking on the telephone to somebody and asked if there was a tax agent there. At that time I was suspicious that it might be something other than a legitimate business. I thought they were dodging a state sales tax. I heard them talk about sales tax. He said over the phone that he wanted to know if there was any sales tax agents there, though I would not be positive. This occurred in the Spring of 1939.

There were possibly four or five shipments after that. I would not say that I stencilled and packed any of those shipments, though I did make out the bills of lading. I did not ask if they had paid the sales tax at the time I made out the bills of lading. I did not tell Mr. Barrett that I had heard them inquiring about sales tax investigators, nor did I tell anyone else connected with the management of the warehouse. It is true, as I said in my statement, that at that time I thought they might be handling something other than cleaning fluid. I did not know

what it might be. I did not tell this though to Mr. Barrett or to Mr. Dan Carroll.

Every item is listed on a lot number. No one uses the Lake Park warehouse for storage, unless I make out a lot number. I made out such a number for J. Rosen and for Rug Life as operated by both Nelson and Williams. Those are the only ones I know that operated there. That has been my duty since 1934 or 1935. I have been warehouse man there around six years. I do not recall whether I was there the entire year 1935 or not. I think I went in before the fall rush in 1935.

The early record of the Rug Life account or J. Rosen account is April, 1936. I was there during that entire year and could refresh my memory of our accounts by looking at the files. I did not know them from memory.

I do not know the defendant Al Wainer. I never saw him before he came here to Detroit. I do not recall Mr. Wainer ever having had space in our warehouse. [fol. 522] I knew all of the space that was used in the warehouse in the Spring of 1936. I checked all the records of occupancy of the warehouse to find tenants who were there in the Spring of that year. I went through every file. I do not know the merchandise handled under each of the files, because all I looked at was the rate sheet, which showed the location of room 549. Upon instructions of Mr. King, I looked only for the occupants of that room.

When I stated yesterday that people stored goods in the warehouse under assumed names in five to eight per cent of our accounts, I meant that I wrote down the assumed name at the request of the tenants when they wished me to. I imagine that it was quite often when there were assumed names used and I did not know about it. I would say that in our warehouse records the names of our tenants would be in error in five to eight per cent of the cases. I never called the general manager about this practice. We never questioned the name people wished to use when they stored their goods. It was a rule of the warehouse which quite often required us to put down a fictitious name for a tenant. I do not believe I ever talked with Mr. Barrett about this. I never doubted that it was what the warehouse wanted me to do. Our reasons for doing this was to enable people to store merchandise secretly. So far as I know, it was so that they could break a lease or avoid a

chattel mortgage. I think that is the policy of all warehouses as well as the Empire. I would safely say that other warehouses have a similar policy. It is a common practice in the warehouse business.

I have not worked for any other warehouse in the past twenty years, except the Empire. My statement is an impression gained from my experience with the Empire. I now find that the Rug Life people were using fictitious names. At the time, I did not know it. When the boxes came in addressed to W. E. Lewis & Sons, he told me they were coming under that name. I find out now that it was a fictitious name.

I think I am familiar with the odor of alcohol. None of this liquid ever smelled like alcohol to me. So far as I know, the only thing it ever smelled like was formaldehyde. I never knew anyone to clean a rug with formaldehyde. [fol. 523] I do not know the defendant Braverman.

I do not know exactly the last time I talked with Henry Skampo. It was when he quit business with Don Nelson. Referring to the conversation we mentioned yesterday at the United States Attorney's office on the first day of this trial, I still do not recall saying that I do recollect any other conversation with Skampo. My recollection of the conversation in your office was that you asked me if I recalled ever meeting Hank in a restaurant. I said I did not recall meeting the man at that time, though I would not be positive that I did or did not meet him. I do not recall anything else that was said in your office, because we were only there about a minute or two minutes.

I do not recall anything being said in your office about Dracka coming back and turning the business over to Johnson in January, 1938. The only thing I recall about the conversation in your office is that you were asking me about Hank. I believe you did ask me if at the time Hank came there we hadn't re-rented the place to Johnson, when Nelson came over there. I do not recall being asked if I took it up with anybody at the time I re-rented it to Johnson and Nelson. I did not handle the renting to Johnson. I do not recall anything like that being said. I may have forgotten some of the things that were said at that time.

Q. To refresh your recollection, let me ask you if this wasn't stated in that conversation: "Mr. Hopping then asked Stevens if at the time Dracka and Skampo had come

to the warehouse to rent room 549 he had taken full responsibility of renting the room himself. Mr. Stevens replied he had not." Do you recall that?

A. I don't recall that.

Q. Would you say it was not said?

A. No, I wouldn't say it was not said; I wouldn't be positive.

Q. "And that he had called the main office and talked to somebody about renting the room, and arrangements were made from there." Do you recall that being said?

A. I don't recall it.

Q. Do you remember something being said about it?

A. I do remember something being said about it.

[fol. 524] Q. Do you recall then that Mr. Hopping asked you who Mr. Stevens called at the main office, and Mr. Stevens replied he did not remember. He may have talked to Mr. W. C. Carroll, the president of the corporation, a woman stenographer, or Mr. Barrett. Do you remember that?

A. This conversation was in your office?

Q. On May 14th?

A. I may have said those things or answered you as you say there, but I really don't recall it.

Q. You wouldn't say that it didn't happen?

A. I think I was a little excited when I walked in there, and somebody come out and pulled me into your office, and I believe I was pretty excited.

Q. Just tell us what did happen.

It all happened quite suddenly. I was told I was wanted in the office. You and Mr. Hinton were there and you started questioning me. I was real excited. I didn't know what it was all about. I had been questioned so often in this case that I got excited every time I was questioned about it. I do not remember what happened when I got in there. I do remember your asking me about Hank. I remember your telling me that Hank had told either you or Mr. Hinton that he had met me in a restaurant one noon. I never could recall such a meeting. I believe at the time I wouldn't deny I didn't meet him, but I did not recall meeting Hank at that time. I believe you did ask me if Hank came there to try to rent room 549 at the warehouse, and I think I said I don't recall him coming back to try and rent the room. I do not recall telling you that

that at the time Hank came there it was already re-rented to Johnson upon Dracka's recommendation. I do not recall your asking me if at the time I re-rented it to Johnson when Nelson was there, I took it up with somebody. I don't deny I said that, but I do not recall it. I do not recall anything being said about that when I was there. I was nervous and excited. I would not say it didn't happen. I would say that if it did happen, I would recall it.

Q. Don't you recall that you were asked by Mr. Hopping, "Well, on that occasion did you talk to W. C. Carroll?" Mr. Stevens replied, "No, I did not talk to W. C. Carroll." Do you remember that?

[fol. 525] A. I really don't. I am frank in admitting I don't recall it.

Q. And you were asked, "Did you talk to the woman stenographer—" whose name was mentioned at the time, and you said, "I am not sure."

A. I may have said it. I don't deny that I did or did not.

Q. And you were asked again by Mr. Hopping, "Well, did you talk to her about it?" And you answered, "I must have talked to Mr. Barrett."

A. I may have said it, I am not positive.

The Court: Read the answer.

(Thereupon the answer was read by the reporter.)

Q: In fact, you did say it, didn't you, Mr. Stevens?

A. I wouldn't say whether I did or didn't.

Q. And you were asked again by Mr. Hopping, "Well, did you talk to Mr. Barrett about renting a room at that time?" And you said, "Yes"?

A. I may have said it.

I do not recall anything else that happened in the District Attorney's office on the morning of May 14th, than what you have mentioned here. You and Mr. Hinton were present. I do not know where Mr. Cavanagh and Mr. Fischer were at the time. I do not recall who called me in there. I walked in and someone motioned me towards a door to my right. I walked in. My recollection is that I met Mr. Fischer as I was coming in there, not that he brought me in. He is the one who told me I was wanted in the office. I do not recall him walking in the room with me. I would not say he was not there. I do not recall

the first thing that was said to me after I came into the office. I thought I was going to be questioned again for an hour or so, I was excited. No one told me I was going to be questioned for an hour or so, but I had it so often I thought it was going to be that again. It last about a minute and a half. I do not know if anyone mentioned how long we had to talk at that time.

I did state yesterday that Dan Carroll knew the Rug Life business was operated by the same people right straight through. That is true. The group included the six people that handled it from the time the Rosen account was opened until the Rug Life material was seized in July, 1939. It was operated by the same group of [fol. 526] people. The men who actually did the shipping out shipped from time to time. I knew it was the same group of people that were operating. I am pretty sure that Mr. Nelson knew it.

I never had occasion to talk with Mr. Barrett about it after the first time. I am positive I did not speak to Mr. Barrett about it at the time Nelson came over and turned it over to Al Johnson. I do not recall making a statement that I did talk to him at that time.

Government's Exhibit 217 is in my handwriting. I imagine they are the second and third sheets of a bill of lading for a Rug Life shipment. They could be a second and third carbon copy of the same bill of lading, or they might be copies of two separate bills of lading that were made out the same day. The date on here is May 2, 1939. It is a shipment to Goddard Products, Cleveland, Ohio, care of John Carbaugh and Sons, for ten boxes. The information on each sheet is identical. There were three copies of a bill of lading usually made out for the Rug Life shipments. This is the same type of bill of lading used in making out shipments to the Roadway Transit. There also was an original similar to these two. I have no idea how these two copies happen to be in the Empire Warehouse files at the main office.

Cross-examination.

By Mr. May:

I started in the warehouse in 1919. I have never been arrested or convicted of anything in my life.

King first contacted me about this case around the last of May or first of June, 1936. I mean 1939. Mr. King had previously been over to talk to Mr. Barrett, who, I believe, in turn sent him to the Lake Park Warehouse. I do not believe I called Barrett up when King arrived. I think Barrett called me before and told me that King was coming over. At that time, in May, 1939, the Rug Life were still operating. They continued operating after King talked to me. I think they made two shipments after that. They were between June 1st and June 15th, I believe.

King told us he knew these shipments were coming out of the warehouse. The Rug Life people continued to op-[fol. 527] erate after I talked to King and with his consent. I think it was a little later than the first part of June that we took King to room 549. The first time he went up there Mr. Herdrich was with him. I do not know whether that was the first time he was there or not. He was there so often.

After May of 1939, we were given to understand that the warehouse would be under surveillance at all times. Mr. King gave me to understand that. Mr. King did not tell me directly what they were going to do, but I believe he told Mr. Barrett, who in turn informed me. That was when they first started the investigation, around the last of May or first of June. I knew the agents were watching the premises after Mr. Barrett had told me they were going to.

Following my talk with Mr. Barrett, I performed my duties in the normal manner. I carried on the work with the Rug Life, such as taking them up and down in the elevator the same as I had previously done. I did nothing to create suspicion in the minds of these people. I was instructed so to act by Mr. Barrett. To my knowledge, Mr. King told Mr. Barrett to do this. I had no direct conversation with Mr. King in that regard. My orders came from Mr. Barrett. After Mr. King's coming there, there were a couple of photographers who came. They were the only ones, except Mr. King and Mr. Herdrich, who visited the room again.

At the time I spoke to Mr. Hopping at his office, I do not believe I had any idea he was going to use that in the trial of this case. I said that I saw the defendant Frank about the Empire Warehouse upon two or three occasions. To my knowledge, he never handled any cans. Sometimes I

saw the shipments come into the warehouse and sometimes not. If I wasn't on the platform when they came in, Mr. Carroll probably let them in. I would find them on the dock or elevator when I came down. Either Mr. Carroll or I saw persons bringing merchandise to the dock. If Mr. Carroll or I weren't there, there might be a driver of our concern there.

In May of 1939, we had about twelve drivers. These were questioned by the Government officers. On one occasion [fol. 528] I recall when Mr. Herdrich questioned three of our men in the warehouse. At that time King and Herdrich were talking to me and said they were going over to the garage to talk to the drivers. I told them that there were some of our drivers present at the warehouse then. They took these drivers aside and talked to them one at a time.

It was either the Spring or Summer of 1938 that Dracka stopped using the room. Nelson used it in the Spring of 1937. Williams came in alone and started about the Winter of 1938. At the time King interviewed me in the hotel, he showed me some pictures. All told, I was questioned about twelve or fourteen times by Government officers about this case. They never questioned me less than an hour and then as much as two and a half hours. I identified pictures for the Government agents. I believe there were five all told, and one picture of the truck.

The first I knew that Clarence Dracka was the man I knew as Don Nelson was when we came here before the Grand Jury. I had no knowledge before that of his using a fictitious name at the warehouse. I did not know the man I called Hank was Hank Skampo until appearing before the Grand Jury.

Redirect examination.

By Mr. Cavanagh:

At the time the statement I gave was taken, there were other matters discussed that were not in the statement. The officers asked practically my life's history. I told them that I had worked on a farm, entered the Army, and upon discharge went to work for the Empire. They asked about my schooling and such questions as that. Those facts are not in the statement. I was warned of my constitutional rights before the statement was taken. I do not know

whether that appears in it or not. Now, that you show me Government's Exhibit 222, I do not believe it does so appear. There were other conversations about these transactions which do not appear in the statement. When I made this statement, there were four Government agents there. I recall the names of Mr. Herdrich, King, and Campbell [fol. 529] bell, but not the fourth name. While the statement was being taken, Mr. Campbell was trying to have me identify the man known as Bill Bagdonas. I described him as to height and the type of clothes he wore. At that time, I was not shown a picture of him. At the time, Mr. Campbell said from the description that he was pretty sure he had his man.

They asked me if I received any money from these men and I told them that I had not, except upon two or three occasions Nelson gave me a dollar, telling me to buy myself a cigar. That does not appear in the statement. I believe at that time they asked me Al's last name. I am positive I knew Al as Al Williams at that time, though I am not positive whether I told the Government agents that or not. I later identified a picture of the man I knew as Al Williams. That was upon the occasion of one of the visits to the Hyde Park Hotel room. It was before the statement was taken. I am not positive whether it was before or after the statement was taken that I identified the man known to me as Al Williams.

I do not think anything was ever done to obtain a credit investigation on this account. The only time in our business a credit investigation is made is when goods leave the warehouse and charges are not fully paid. We then usually demand cash payment for the account. If this is not paid, and the party asks for time, we turn the matter over to Mrs. McShane, who would decide whether to charge it or not. Mrs. McShane is the office supervisor and head-bookkeeper. She has charge of these accounts. I do not recall ever discussing this account with Mrs. McShane.

I do not know the liability of the warehouse for turning merchandise over to a third person. The only thing Mr. Carroll said to me about turning the contents of the room over was that the party was to pay the back rent on the account. I do not believe I was in the office at the time this matter was discussed.

Agents of the Alcohol Tax Unit talked to me about twelve or fourteen times. I went to their offices down town. I had an appointment to go down town. Upon one occasion Mr. Herdrich called and wanted to know if I would be available to go down town the following morning to [fol. 530] identify a picture of Bill. He then asked me if I was busy that afternoon and I said that if it was necessary I could get down there then. He told me he wanted me to go down there at ten o'clock the following morning and he would have this party there. About nine o'clock of the morning I was supposed to go down, Mr. Herdrich called and said it was unnecessary for me to be there.

I do not recall whether I was ever asked by any of the Government men whether the contents of my statement were correct or not. The only time this statement had been discussed with me by the Government agents since making it was when I came before the Grand Jury. This statement was made before the time I found the file under Rosen account. I do not recall how long after making the statement the Rosen account file was found. The Rosen account did aid me in connection with the statement; in that after finding this file I learned I was mistaken when I thought that Rug Life was the first account in the building. I learned that a certain lot number was not the original of that account, but was on the Rosen account.

At no time did I refuse to cooperate with the Government men.

From April, 1936, through June of 1939, the warehouse had accounts with a county commissioner. They also had a floor and a half of the building occupied by WPA people, who were making listings of the county records. They were there for about a year. It was during the time this transaction occurred.

I do not think that I saw Mr. Barrett at Lake Park Avenue Warehouse over six times a year. I do not think he was ever present upon an occasion when there was any activity in the Rug Life account. To my knowledge, Mr. Barrett did not know any of the officers or men handling this account. At no time did I have any agreements with any of these men. Outside of what I have said about meeting Mr. Nelson outside the warehouse, I never met any of them, except in the warehouse. There was one time that I invited Nelson to my house for dinner. All other times I

met him at the coffee shop in the morning. I never discussed the Rug Life account with him upon these meetings. [fol. 531] One Saturday night, Mr. Nelson was leaving the warehouse about the same time I was. At his suggestion, we had a glass of beer together. He asked what I was doing that night. I told him I was going home to dinner and said that if he had nothing else to do I would like to have him come with me. He did come to my home for dinner with my wife and children. After dinner, he, my wife, and I played bridge until 11:30. My wife was present all evening.

While we were playing cards, he apparently noticed me watching his hands, which appeared mangled and looked like burns. His face was also mangled. He noticed this and said, "I presume you are wondering what happened to my hands and face." He then gave an elaborate description of an automobile accident as being the cause and went into considerable detail of his being confined in the hospital.

I check all furniture accounts in and out of the warehouse. I do not check our commercial accounts. There is a moth-proofing solution we have that is handled by the people themselves. There is also the Museum of Science and Industry account handled by Mr. Pacente. I did not check these accounts in or out, though I would run the elevator to take merchandise up and down. There was a man one time in there that had canned soup. I did not check that merchandise. The man came and got as many cans at a time as he desired. We did not check it in or out.

While handling the boxes for Rug Life, I did not know they contained alcohol. I first learned it when Mr. King came to the warehouse. I do not recall who brought the merchandise in at the time of the Rosen account. I am pretty sure it was the Cushman Motor-Freight who took it out. It could have been the same party brought it in that took it out. I have no recollection of it. The Rosen account was brought to my attention when Mr. Barrett asked me to go through all the files and find out who had occupied room 549. I started back in 1930 and in going through the files I ran across the Rosen account. I immediately called Mr. Barrett on the telephone. I told him [fol. 532] that I had found it and had connected it up with the Rug Life operations. That was after the Government men had been in.

Before that, there had been nothing unusual about the Rosen account, which would cause it to remain in my memory. There was nothing about the means of transportation on this account which impressed me, nor was there any circumstance or suspicion of this account. I never knew who Star Products was. The only conversation I had in which that name was used was when they told me to make out the bill of lading. At that time, they never told me who they were. I did not know if it was a fictitious name or not.

I did not aid Nelson, or attempt to help him increase his business, because the warehouse has a firm by the name of Birek-Fellinger who does all of the rug cleaning for our customers. We get a commission on business sent them.

The only time I ever have any occasion to investigate the contents of boxes and barrels is when a customer wants me to open them. I never examined the contents of the Rug Life boxes.

The warehouse is fire-proof. We have manufacturers in our warehouses. In the 47th street warehouse, a firm is making refrigerator boxes. At the 40th street warehouse, there are five or six different manufacturers. At the 62nd street warehouse, there is a chemical patent medicine outfit, which manufactures patent medicines. To my knowledge, none of these people need any special license to manufacture there. I never knew of our company requiring special licenses before people obtained space in the warehouse. The fact that this was a manufacturing account would not place any limitation on it.

I never have occasion to ask our customers the source of their merchandise. The only question I ask is where they wish to have the goods moved to. The only way I would know where any of the merchandise came from was if I happened to glance at the ticket. I did not know where the merchandise for the Rug Life account was coming from and I never made any inquiries about it. There was [fol. 533] nothing about the unloading of the deliveries that caused me to become suspicious. It was loaded like all other merchandise.

I did testify that I put more time on the Nelson account than the others. This was because most of our accounts are stored for a long period of time. On the Nelson account I had to go up and down with the boxes. The only time I

helped Nelson stencil the boxes was when it became late and I wanted to make sure of being able to close at five o'clock. This happened five or six times. That is what I had in mind when I used the word "packing" in my statement. Stenciling is also packing to me.

There was nothing unusual about the tools that were in this room. I have two sets of them myself in the warehouse. The tools that were there are used in every business. There was nothing that would create a suspicion in my mind as to what they were to be used for. I had no security for payment of back rents or anything of that nature. That responsibility was Mr. Carroll's.

I may have discussed the terms of the lease on the Rosen account, but I do not believe I did on the Nelson or Johnson accounts. Payment for the arrearage, which was assumed by Nelson was handled entirely by Mr. Carroll. The same is true of the past account assumed by Al Johnson. The only time that I might have inspected the contents of any rooms was when I may have locked some rooms that were empty and I would have to go through the aisles to find out if I had done so. I have the right to go into the rooms rented to tenants. Frequently people request me to. We also notify customers whether their goods should be moth-proofed. If it is desired, it is my business to enter the rooms and take out the pieces that are to be cared for. This is all done at the customer's request.

I inspected room 549 three or four times during the period that it was occupied. One occasion I thought we might need it just before a rush period. I then found that this material was in there and I told Mr. Carroll I thought we ought to close out the account. I, at that time, [fol. 534] thought the account was active on the books, though I did not know.

The Merchants Chemical Company did not have an account in our branch of the warehouse. They have had an account in the 40th street warehouse since 1928. I do not know whether it is actually a company or not.

The only way money for shipments may be paid to me on this account was if I happened to be on the platform and the Rug Life people wanted to pay the cartage. I took the money and gave it to Dan Carroll, who gave me a receipt which I turned over to the people. The money I received was for cartage or storage. I do not recall ever

advancing money for them. I do not know whether the company advanced any funds for incoming shipments or not. I do not know whether any charges were paid to railroads or trucking companies on behalf of Rug Life, Inc. At no time did I have anything to do with that.

In my statement, I said that after about a year Hank did not appear at the warehouse, and Nelson continued to handle the business alone in the same manner. After refreshing my recollection, I find he handled it from April, 1937. The only way I knew that Don Nelson was in there in 1938 was when Mr. Carroll had told me that he had been there to introduce Al Williams.

When I was shown Government's Exhibit 98, Mr. Herd- rich asked me if that was the truck that had been there. I said that it looked almost exactly like one that was. There was nothing distinguishable about it, except that it was a new Dodge truck. I have seen such trucks quite often.

I was not always on the dock when these deliveries were brought in; though I was usually in the building. No one suggested to me the way in which the merchandise was brought in. I have an independent recollection of the dump trucks that I have testified to.

I overheard Johnson's telephone conversation about the sales tax. I do not know anything about it, except that I pay a sales tax in grocery stores and restaurants. I do not know whether it is a state or federal tax. There was nothing else which created any suspicion in my mind. I merely [fol. 535] heard him say that he wanted to know if there was any sales tax agents around.

I never knew that the name Rug Life, Incorporated, was fictitious until this investigation started. I have never made any investigation and do not absolutely know whether there is such a corporation as Rug Life.

Cases where goods are stored under fictitious names, as I before stated, usually happen where a person wishes to break a lease in his apartment. On our ticket there is a place for the man to write his name on, as well as the name he wants the goods stored under.

Defendant's Exhibits 3 to 8 are storage orders. That is the order given our driver when he goes out to pick up a storage deal. This one shows the name where he picked up the goods to be H. Maxwell, 5236 South Malvina avenue. It authorizes us to store the effects from that address in the name of Mrs. R. McLay, 7118 Wabash avenue. This

happens quite frequently. I know nothing of the circumstances surrounding this exhibit. I do not know the circumstances surrounding any of these particular deals. These exhibits were obtained from our department at the main office, or possibly in one of our branch warehouses.

If one of our trucks is near a warehouse he will go in, the man on the dock will call Pat Carroll, and as an order is given it will be put on the storage order ticket. Quite frequently are goods stored in a name other than the person. I made out bills of lading any time there was a shipment out of the warehouse. There were all types of bills of lading. I believe this block of Roadway Transit bills of lading were brought to me by Mr. Nelson. I have all types, including railroads' and transit companies' bills of lading at the warehouse. I can use any bill of lading at all by just scratching part of it out and put another concern's name on the top of it.

The information on Government's Exhibit 217 was given me by Mr. Williams, I believe. He told me the number of boxes and weight. He merely said it was rug cleaning fluid. I made bills of lading for Mr. Nelson in the same manner. I have no idea how these particular exhibits happened to be in the Empire file. I do not know that they were in the file. They were not in my file.

Mr. King first came in around May or the first of June. I understood that he told Mr. Barrett to tell me to go ahead and operate normally. Mr. Barrett so told me. The only time I discussed this account with Mr. Barrett was when this investigation came up.

I think I called Mr. Barrett on the Rosen account, though it could have been somebody else. All I know about Don Nelson taking over the Rosen account was what Mr. Dan Carroll told me. It seems that Mr. Carroll told me that he had a phone call or had called a phone, at which time he talked with Mr. Rosen. I think at that time Mr. Carroll had Mr. Rosen's phone number.

I receive forty dollars a week at the warehouse. I belong to the furniture movers union. Our hours are eight to five, six days a week.

During the time Rug Life was a tenant, I only saw two men. They were Don Nelson and Hank Skampo, in connection with that account. I think I would know the fellow who came in and gave the name of Rosen, if I saw him or a picture of him. I did not know him by any other name.

Starting in January, 1938, I saw Al Williams in connection with the Rug Life account and later on Bill. I saw no other persons connected with these activities at any time.

Recross-examination.

By Mr. Hopping:

I went up to room 549 with Mr. King and Mr. Herdrich in June 1939. The equipment that was then there was the same as had been there throughout the Rug Life account. I have looked at the articles in the court room which have been marked Exhibits 67 to 73, inclusive. I do not know if the machines are the same as were in the room, but they were machines similar to that, and empty boxes similar to that box. The boxes, implements and materials taken from the room by Alcohol Tax Agents were the same as those which had been used by Rug Life and J. Rosen.

[fol. 537] Government's Exhibit 221, dated January 11, 1938, which is an Empire van removal order, directing the driver to pick up twenty-five boxes at the National Box Company and deliver them to the Empire Warehouse shows an entry "Advancee \$27.25." That looks to me like that amount of money was advanced. It does say, "See Daniel Nelson." That is Clarence Dracka. "G. A." means Guy Anderson, the Empire driver.

Exhibit No. 118A is a sales ticket of the National Box Company dated November 25, 1938, signed by Guy Anderson. It says C.O.D. forty boxes and is marked paid. If that money was advanced to Guy Anderson, Mr. Carroll would have had to do so, because I would not have that much money.

Exhibit 122A is another sales ticket of the National Box Company, dated March 8, 1939, for the sale of twenty-five boxes and signed by Guy Anderson and marked paid. As to whether that was handled in a similar manner, I do not know, because I do not know whether it was marked as paid over there and Guy just received the ticket or not. There would be a note that Guy Anderson paid for it. From this I could not say whether the money was given to somebody in our warehouse and to one of our drivers or not.

Exhibit 124A, a sales ticket of the National Box Company dated April 18, 1939 for twenty-six boxes, is signed

for by Anderson and marked "C.O.D." paid. I would not say that that money was given to me and then by me to Anderson. I could not say whether the money was advanced by the Empire Warehouse to pick up those boxes or not. It might have been. As to whether it was handled differently than the transaction on Exhibit 221, Mr. Nelson could have left the money in the office and in turn the driver taken it from the office. I have no recollection as to what was done. I do not know how it was done. I did not receive money from the Rug Life people to pay for their boxes. If it was paid to Mr. Carroll, it was turned in by whoever was running Rug Life. I have no recollection of how these boxes were paid for by the Empire drivers. Al Williams did not give me money [fol. 538] to give the Empire drivers. The only money I collected from Al Williams would be for storage in the warehouse. To my knowledge, he did not give any money to me to give the drivers.

I did say that Birek Fellingner Company was a big rug cleaning outfit. I did not give Don Nelson their name as a good prospect to sell rug cleaning fluid to.

When I answered Mr. May that the Alcohol Tax Agents had put a cover on the warehouse I understood that they had the warehouse under observation. I guess the agents told Mr. Barrett that they were trying to locate the source of the alcohol. They did not tell me. Mr. Barrett merely called me and told me to cooperate with them fully and carry on business as usual. They sent two more shipments after that. I have no idea why they stopped sending out alcohol then. I think it was just previous to Mr. Barrett calling me on the telephone that I heard Al Johnson and Bill Bagdonas talking on the telephone about the tax agents. It might have been a month previous. I do not know how they learned of tax agents being around. I did not tell them that there were Alcohol Tax Agents looking for the Rug Life people. The only ones at the Empire Warehouse who knew the agents had been there was Mr. Barrett, Mr. Dan Carroll and myself. Mr. Dan Carroll told me to go along with the Alcohol Tax Agents. Neither Al Johnson nor Bill Bagdonas said a word to me about whether there had been agents around or not.

I correctly stated on Mr. May's cross-examination that I had no idea whether the conversation of May 14th in

the District Attorney's office was to be used in this trial or not. At that time I did have a subpoena to testify as a witness for the United States in this case.

My signature appears on Government's Exhibit 225. I signed it in Detroit before appearing before the Grand Jury. Before signing it, I read it, but I did not understand it. I could read the top of it, which said it was a waiver of immunity, but I did not know what that was. At that time, I went to look for my attorney, but could not find him. He had been here the day before and left. In fact, I went back to your office to look for him and he [foi 539] had gone. I did sign the waiver of immunity and understood that any testimony I gave would be used against me. At that time I did not know I was going to be one of the defendants in the case. I did not know this after reading it over. This was the first time I had ever been before a Grand Jury. I thought I was just there for questioning. I received a subpoena to testify for the government before the Grand Jury. I signed this waiver before testifying. I received a similar subpoena to testify for the government in this trial. I was arraigned in Chicago on this case. I think I was arraigned here in Detroit also. I do not recall the date I was arraigned in Detroit. The record shows it to be February 8, 1940. I have not been questioned about this case since my arraignment. When I told Mr. May that I had been questioned twelve or fourteen times, I referred to the questioning by Mr. King and Mr. Herdrich in Chicago. The only time I talked to anybody connected with the government about this case since my arraignment was at the time I talked to you in your office. I did talk to Mr. Hinton the day I was arraigned here. At that time I believe I did understand that I would be a witness for the government. After I was arraigned there was Mr. Hinton and the other gentleman sitting beside him.

I do not recall your telling me on May 14th that I was here as a witness for the government. I do believe you told me that you wanted to ask me about what my testimony would be when I was called as a witness. I understood that I was to be a witness and we were discussing what I was going to testify to. I do not recall being asked at that time if I had taken the responsibility of renting the room 549 myself, or whether I had taken it up with

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some of the officials of the Empire warehouse. I do not recall stating in response to such a question that I did take it up with Mr. Barrett, who told me to go ahead and re-rent it.

(Government's Exhibit 225 received in evidence, which was thereupon read to the Jury by Mr. Hopping.)

I am still employed at the same Empire Warehouse unit. Telephone calls to that unit come through the switchboard [fol. 540] at the main office. The number is Plaza 4000. That has been our telephone number for ten or twelve years.

Government's Exhibit 192 is a picture of the man I knew as Bill and concerning whom I spoke about in my testimony. He came to the warehouse with Al Williams.

Government's Exhibit 162 is a picture of the man I knew as Al Williams. He has been referred to here as Al Johnson, the defendant.

Government's Exhibit 189, which is a Roadway Transit Bill of Lading, is made out in my handwriting. I believe I made it out for Don Nelson and at his request. The blanks were filled in according to directions I received from him. That is for seven boxes of rug cleaning fluid from the Rug Life, Incorporated to Mayfair Cleaners, Toledo, Ohio, and dated April 21, 1937.

Redirect examination.

By Mr. Cavanagh:

I believe I identified the pictures, which are Government's Exhibits 192 and 162, the latter part of July or the first of August, 1939. Mr. King and Mr. Herdrich brought them to our main office, and after identifying the picture they requested that I initial them, which I did. Exhibit 162 was brought in around the same time. I think I identified it also at 5041 Lake Park avenue. At the time I identified the pictures, I do not recollect any conversation relative to the identity of the men. At that time, King and Herdrich told me the names of the men in the pictures.

The drivers of the Empire Warehouse knew of the investigation by the government. So far as I know, the first knowledge the drivers had was when Herdrich and King questioned two or three of them on the back platform of

our warehouse. I believe this was about the middle of June.

I do not know whether Dan Carroll made any advance payments in connection with this account or not.

[fol. 541] JONES, EVAN A., a witness called by and on behalf of the defendant, being by the Clerk first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Fischer:

I live in Chicago. I operate a garage at 5045 Lake Park avenue and have been so engaged for the past twenty-two years.

I know Fred Stevens, a defendant in this trial. I have known him about twenty years. I know his reputation as a peaceful and law-abiding citizen. It is good.

COUL, WILLIAM J., a witness called by and on behalf of the defendants, being by the Clerk first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Fischer:

I live at 461 Buens Drive, Detroit, Michigan. I am president of the Riverside Storage and Cartage Company, and have been so engaged for the past three years. I have been associated with the corporation for seven years prior to my present office.

As president, my duties are to oversee the departments, handle accounts and manage warehouses. We have thirty-five employees, under the ultimate supervision of myself, though there are department heads. We have two branch warehouses, sales department, packing department and office.

At various times in the past few years, we have had dealings with the Empire Warehouse in Chicago. Our

first transaction with them was before the time I was connected with the Riverside Storage Company. We have had several transactions in the past year.

The general reputation of the Empire Warehouse Company in the City of Chicago for being a legitimate and [fol. 542] orderly warehouse company is good. The general reputation of James J. Barrett, the defendant, as being a peaceful and law-abiding citizen in the community in which he lives is good.

Cross-examination.

By Mr. Hopping:

I have lived in Detroit for the past seven years. Prior to that, I lived in California. I lived in California for approximately ten years. I have never lived in Chicago.

In the past seven years, I have been actively engaged in business in Detroit and spent most of my time here. I have probably been in Chicago six or eight times. I would say that my knowledge of the reputation of Mr. Barrett has not been based upon those seven or eight visits to Chicago. I did learn of his reputation on those visits, though I was not discussing his reputation. To some extent, my knowledge of Mr. Barrett's reputation is based upon dealings our warehouse company had with the Empire.

I have never visited Mr. Barrett in his home, nor has he in mine, nor have I ever met him socially in the community in which he resides.

ZECH, FRANK X., called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Fischer:

I live in Grosse Pointe Park, Michigan. I am secretary and general operating executive of the Wolverine Storage. That is located on East Jefferson and Terminal in De-

troit. I have been in my present position for the past eight years. As such, I have charge of the entire organization.

Bills of lading are prepared usually by one of our office girls.

[fol. 543] I have done business with the Empire Warehouse in Chicago about twenty-four years. Their reputation is very good.

I know the defendant, James J. Barrett, and his reputation as a peaceful and law-abiding citizen in the community in which he lives is good.

Cross-examination.

By Mr. Hopping:

I have lived in Grosse Pointe Park eighteen or nineteen years. I was born and raised in Detroit or vicinity. I never lived elsewhere.

TANNER, HARMON W., called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Fischer:

I live at 26 Amherst Road, Pleasant Ridge, Michigan. I am a partner in the Tanner Fireproof Warehouse. This is a moving and storage business. I oversee the activities of the entire organization. We have eighteen employees and three departments. The office is under my supervision. A superintendent has charge of the moving and storage. The warehouse and storage company is located at 2510 Third street, Detroit.

I have done business with the Empire Warehouse of Chicago, off and on for the last fifteen years. I know James J. Barrett through that company only. The reputation of the Empire Warehouse company is good. The reputation of Mr. James J. Barrett as a peaceful and law-abiding citizen in the City of Chicago is good.

[fol. 544] Cross-examination.

By Mr. Hopping:

I have resided in Detroit or vicinity for thirty-four years. I have never lived elsewhere.

I have known James J. Barrett ten years or more. My acquaintance with him has been through the warehouse business. My knowledge of his reputation is based upon my business dealings with him. I have never associated with him socially or visited in his home.

Redirect examination.

By Mr. Fischer:

I have attended conventions of warehouse associations and have discussed Mr. Barrett with other people.

CARROLL, PATRICK, called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cavanagh:

I live at 8356 Peoria street, Chicago. I have been employed by the Empire Warehouse about twenty-three years. I have charge of the cartage department. I have had that position about eighteen years.

I am no relation to any other employee or official of the Empire Warehouse. My duties are to dispatch trucks on different jobs during the day. When I receive a call from a branch warehouse requesting delivery of goods to some address, I make out an order, give it to a truck and the goods are delivered. I make out a moving order. This is given to the drivers. He brings it back to me after the work is done. Notations of collections to be made are entered upon this order by myself.

During 1938, sometimes there were twenty-five drivers and during the busy season we have from eighty-five to one hundred. The average employment of drivers is [fol. 545] twenty-five. They all operate out of the garage

at 4714 Cottage Grove avenue. I am usually there in the morning when I start them off. After that I make up my records; take orders that come in on the phone. I also check the drivers in at night. No one, except myself, dispatches these trucks.

There are about three slips in Government's Exhibit 221 that are not made out in my handwriting. I recognize these three as having been written by employees of the warehouse. Other people would make out such orders in cases where I would call up the clerk at the branch office and he would make them out. I do not recall the circumstances surrounding the issuance of any of these orders. There is nothing unusual about the issuance of any of these orders. Most of these orders came from Dan Carroll at Lake Park avenue, because that is where the goods were hauled from.

I recollect occasions on which I dispatched a truck to pick up empty boxes on this account. These boxes were delivered to Empire Warehouse at 5041 Lake Park avenue. The notation here, "See Dan Nelson" is in my handwriting. I do not recall any circumstances surrounding the issuance of this exhibit. I received the information that is on there from Lake Park avenue. Probably Dan Carroll gave it to me, because he is the one that gave me most of the orders. I do not know whether Don Nelson gave me that information or not. I do not know Don Nelson. To my knowledge, I never talked to him.

I do not recall ever having advanced funds in connection with this account. I think on one occasion the amount was paid at the Lake Park Warehouse. I do not recall what it was. That is the regular procedure in our business. The amount for the advance was paid over there and Dan Carroll called me and told me to give it to the drivers and that he would give me the money back the next morning. That is quite often done. I think that was done in this case. There was nothing unusual about this account that I know of. After I gave the auto van removals to the driver, he would take them and then return them back to me after having performed the service. [fol. 546] On these it shows that the services were performed, because it says it was paid.

All of our drivers hauled this merchandise at one time or another. Sometimes we would have a driver in that sec-

tion and I would get an order to haul these goods to the Roadway Express. I would have the truck closest to the warehouse get it. After the auto van removal orders were returned to me, they were turned in to the Bookkeeping Department at the main office, where they were checked and filed. I would not know whether there were any bills of lading or other memorandum connected with these or not. All I was interested in was the order I gave the driver. There might have been bills of lading or memorandum for boxes attached. I did not pay any attention to that. It would not make any difference to me if the shipments were delivered to Rug Life that had been purchased in some other name. I believe I recollect one occasion when some boxes were purchased in another name and delivered to Rug Life. I do not recall to whom they were consigned.

The Lake Park avenue Warehouse is usually referred to as the Empire. There are seven units of the Empire Warehouses in Chicago. Only the Lake Park avenue one is referred to as the Empire Warehouse.

This particular order, dated January 5, 1937, says, "Call on Rug Life, Incorporated at the Empire Street," that is the way I describe the warehouse, "and take them to 39th and Wallace, six boxes, collect \$5.00." When it says on there Empire street, it means 5041 Lake Park avenue. On occasions there were bills of lading or other memorandum turned in by our drivers. There was nothing unusual about that. There was nothing unusual about the operations performed by my department in connection with this account. The bills of lading on this account were turned over at Lake Park avenue, by the truck driver to some man. These shipments were handled by seven or eight drivers. I gave the order to anyone who was near the warehouse. I did not pick out any particular truck.

Most of our equipment is large moving vans, though there are two smaller trucks which pick up small articles like boxes and barrels. The name "Empire Warehouse" [fol. 547] is printed in large letters on all of our equipment. Some times, some of the large vans moved this merchandise. Most of it was hauled by Guy Anderson, who drives the small ton and a half Ford truck. He hauled small loads of furniture as well as freight for us. I believe on one occasion I was called upon to pick up some merchandise from a box company and deliver it to the Empire Ware-

house for somebody else, but I do not just remember. That is not unusual. Many times I go to the furniture mart and pick up goods for one person, which are going to another name. I cannot say that I recall any time I picked up merchandise in connection with this particular account consigned to someone other than Rug Life. I do not recall ever receiving any written memorandum or bills from box companies which were charged to any one other than Rug Life. If I had it would have made no difference, because I am just interested in the cartage ticket.

I do not recall whether I sent Guy Anderson to the Norwalk Truck Lines for merchandise consigned to this account. However, there is a record of it, and I probably did so.

I do not recognize the signature on Government's Exhibit 168, nor do I recall seeing that particular exhibit. I never had a driver in November, 1938, by the name of Cushman. I do not recall ever sending our drivers over to the Norwalk Truck Lines. I do not know where that truck company is located. After I am through with these exhibits, they are turned into the Bookkeeping Department for filing. I do not see them again, unless something comes up about them. As to Government's Exhibit 221, I did not see any of them after I turned them in. All those exhibits which are marked paid, if my signature appears on them, it means they were paid to me. All of these that have my signature on them were paid to me.

The driver collected the money either at the Lake Park avenue or from the customer. I never asked. When he brought the ticket in, he gave me the money and I marked it paid to me. Charges on these other shipments were handled at Lake avenue. I do not know the procedure they followed. I presume they were turned in to the [fol. 548] main office. I was never informed as to whether or not the cartage would be collected on the shipments. The Bookkeeping Department follows that up. I have nothing to do with the setting up of the charges on this account. I do not know just when we took over the cartage of this particular account, though I think it was in 1937 or 1938. The charge for cartage was made by Dan Carroll at Lake Park. He told me so many cases would be five dollars and so many six dollars. I wouldn't say there was a minimum.

I do not know what arrangements were made with reference to hauling empty boxes. I had nothing to do with those arrangements. I imagine Dan Carroll did.

I do not believe Mr. Barrett ever saw any of those cartage tickets. After the removal tickets are filed, they are held a number of years and then put away.

We hauled other commercial accounts, for example, the Zimmerman Container Corporation. They make an ice-box. These containers are different sizes. They are not shipped in any boxes; they are too large. I do not have a commercial account where boxes or containers are used.

I never had any conversation with anyone about these particular accounts. No Government agent ever questioned me about it. I think the Government men questioned the drivers, though this was not done in my presence.

At the time we began hauling this merchandise in 1937 or 1938, I did not have any conversation with anyone about it. I did talk to Dan Carroll about it. I recollect that I did not want to handle it, because I was too busy at the time and I did not think we were receiving enough for the cartage. I told him I did not want to bother with it to get someone else. I would say the price here charged for the cartage was very fair.

Cross-examination.

By Mr. Hopping:

By fair, I mean it was enough to pay the warehouse company for the services rendered. It was the same charge as was made for hauling other merchandise for the [fol. 549] warehouse. My reason for saying that the business wouldn't pay was because I only had large trucks. Large trucks burn too much gas and are too expensive for this. The small trucks I have take care of the small jobs. I have one of these trucks that takes care of it. I have enough trucks to care for the small orders.

When I have an average of twenty-five drivers, I mean drivers and helpers. There are about eight or ten drivers. We have had the same number since 1935. I do not recognize the signature on Exhibit 168. I do not recognize any signature on Exhibit 165. I do not recognize the writing on there which says, "W. E. Lewis & Sons, per F. C. S." Exhibit 167 is in the handwriting of the ware-

houseman, Stevens. That is the defendant in this case. The "W. E. Lewis" looks like his handwriting. The writing on Exhibit 169, which bears Stevens' signature, is his. The writing on that one, "W. E. Lewis & Sons" does not look like Stevens handwriting. I am just familiar with Stevens' signature. I do receive documents in his handwriting, such as a moving ticket that would be made out at the Lake Avenue Warehouse. I would know his handwriting. On Exhibit 169 I know the signature, "S. T. Stevens" is his, though I do not know whether the words, "W. E. Lewis & Sons" is or not. I am not familiar with much more than his signature. I do not know if the writing, "W. E. Lewis & Sons" on Exhibit 165 is in Mr. Stevens handwriting or not. It does not look like anyone else's handwriting that I know of. It does resemble Mr. Stevens' handwriting.

None of the Auto Van Removal Orders in Exhibit 221 are in Mr. Stevens' handwriting. All, except three, are in mine. The information I wrote on there was on most occasions, received from Dan Carroll at the Lake Park unit. I received the information over the telephone. The switchboard is located at our main office on 52nd and Cottage Grove. That is where Mr. Barrett's office is located. When I didn't receive the information that appears on these tickets from Mr. Dan Carroll, I might have received some from Stevens. I think I did.

From this information, I would write down five cases of rug cleaning fluid and I was to deliver them to the [fol. 550] Roadway Express at 39th and Wallace. Quite a few of them ran that way. That is so many cases were to be picked from Rug Life and delivered to Roadway. There was a difference in the number of boxes. Our charge is based on the number of boxes. Our drivers always check the boxes. I never told the drivers to see anyone at the time they picked up the boxes. If I wanted them to see any person in particular, I would write the information on the ticket.

On the first one, dated January 5, 1937, the driver Schwartz is instructed to go to the Empire and call on Rug Life, take six boxes to 39th and Wallace, the Roadway dock. I did not give Schwartz any instructions as to who to see at the Empire Warehouse. His regular instructions are to see the warehouseman.

On the one dated January 5, 1937, which says, "Paid, P. C." that is written by me when he came back and gave me the Five Dollars. That was for our services in carting six boxes. I turned the money in every day to our cashier at the main office. At the same time I turned in the Auto Van Removal Order, I make a daily report. No other record of the orders I issue are kept. I have a record of the large sheet showing my daily work. Each order has a number. The numbers depend upon the orders I have for the day. Each day I turn this large sheet in with the tickets. I enter all of the tickets on this large sheet myself each day. No pick-up or delivery is made without an entry. A van removal order for each bit of trucking is also made up. Both the sheet and the van removal orders show the pick-ups by the name of the person and the place. I have nothing to do with the checking and filing of these after they are turned in to the office. The girl who works under the Bookkeeping Department takes care of the filing of them. I know they are all checked because from time to time I have to refer to them and my information is obtained from the main office. Our records have been kept this same way since 1934. We have never found any missing. In that way, I know they are all checked and filed. They are filed under the heading, "Cartage Tickets." These cover the tickets for [fol. 551] each month. To find an Auto Van Removal Order of January 5, 1937, it would be necessary to go upstairs, where they are filed away. They are filed in a vault in the main office. I would go directly and get the big sheet myself. I would look at the name of the party I moved. I would see the name on the sheet, get the number and go to the file and the girl would get me the file. In those files would be the van removal orders. It would not take over a half hour to obtain that file.

I have never had occasion to check back these particular records. No one ever asked me to check back to find delivery tickets for any of the Rug Life deliveries. The orders for pick up boxes are checked and filed in the same manner. That is, an entry is made on the big sheet and a ticket is made up.

The one, dated May 8, 1939, ordering a pick-up of boxes from the National Box delivered to Rug Life and marked "Paid, P. C." was handled in the same manner as the

others. Our driver, Guy Anderson, picked up the boxes at the National Box Company and delivered them to the Lake Park Warehouse, received Five Dollars, and turned it in to me. I do not know who he got the Five Dollars from.

The "Fifteen" on here refers to the daily sheet. This could be checked up at any time on a few moments notice. The same is true of the one dated November 28, 1938, in which Guy Anderson picked up forty boxes for the Rug Life and brought back Five Dollars. The one dated April 1, 1938 is another pick-up of twenty-seven boxes paid to me by the driver Turven. The one dated January 11, 1938 was a pick-up of twenty-five boxes by Guy Anderson. On that one is the entry to see Don Nelson. The entry which says, "Advance, \$20.75" was written by me. That does not mean the warehouse company paid out this money, because we do not make advances like that. This may occur when Dan Carroll might call me up from the Lake Park and tell me to pay out \$20.75 that he has the money there from the customer and that he will send it over to me the next day. This entry does mean that the driver took \$20.75 along with him to pick up the boxes. [fol. 552] That either came from Dan Carroll or me. If it came from me, I must have had orders from Dan Carroll to advance it. I would not do so, unless he said he had the money. I do not know whether it was Dan Carroll or Fred Stevens who gave me the order on this particular day. It might have been either one of them. They must have received the \$20.75. I know I got \$20.75 back the next day from the Lake Park unit.

The Rug Life was the only tenant of the Empire Warehouse for whom merchandise was delivered to the Roadway Transit. I do not recall ever delivering any Cushman Motor Freight for any of our tenants. I have been there twenty-three years. None of the drivers ever spoke to me about the kind of merchandise they were hauling for Rug Life. They never told me about the different names that these boxes and cartons were consigned to. I did not know that the Rug Life people were using another name.

I did testify to Mr. Cavanagh's question that some of the boxes were consigned to other names, but that they were for the Rug Life. I do not recall when it was, but

I believe it was two or three times we picked up boxes like that. I think it was about the middle of this transaction.

Among the tickets you just showed me were pick-ups from the National Box Company. I do not remember the name those boxes were consigned to. The drivers never told me they had signed for boxes in the name of Fox Picture Frame Company, of Gary, Indiana, nor did they tell me that they had picked up boxes in the name of Merchants Chemical for Rug Life. They did not tell me that they had picked up cartons in the name of Farquhar Manufacturing for Rug Life. I do not know the names they used on the boxes which were picked up for Rug Life. I didn't pick them up very often.

To my knowledge, I never saw Don Nelson. I had nothing to do with the rental of the rooms in the warehouse. I was never at the Lake Park unit in connection with any of these deliveries.

The Auto Van Removal Orders are kept for ten or twelve years. I have never checked them back that far. [fol. 553] We usually do not check up more than two or three years. In looking through the files, I have not noticed that they have been kept for ten or twelve years. I do not know just how long they are kept. Mr. Barrett does not see these Auto Van Removal orders. I say that because such is the general practice. I do not believe he ever saw these. They are always in the files. My statement is based upon the general practice. If Mr. Barrett did have these tickets, it was without my knowledge. As general manager, his office is in the same place where the records are filed.

The delivery tickets from the box companies were likewise turned in daily. Anything that came in was turned in with the Auto Van Removal Orders.

Re-direct examination.

By Mr. Cavanagh:

I do not recall delivering merchandise to any trucking company other than the Roadway. I deal with all the railroads. We pick up merchandise from the railroads practically every day. The procedure in this regard is no different from that in connection with the delivery to the Roadway. I have never been to the Roadway dock.

So far as I can see, there is no difference between the mode of operation of the railroad terminals and the Roadway dock terminal.

I do not know at whose request Exhibits 221 were here produced. I imagine the file girl took them from the file. I had nothing to do with them. I have not seen them from the time I turned them in until you showed them to me now. The first I knew that these shipments were illegal was when the Government men came in. I believe that was July or June, 1939. I saw some men around there that I was told were Government men. Prior to that I had no suspicion concerning these shipments. They were handled in the regular course of business. I think upon one or two occasions there were further dealings with this account following the time I was told the Government men were there. There was no change in operation at that time.

[fol. 554] KULPINSKI, GEORGE M., called as a witness on behalf of the defendant, Fred Stevens, was examined and testified as follows:

Direct examination.

By Mr. Fischer:

I live at 5118 N. Mangle avenue, Chicago, Illinois. I have lived in Chicago forty years.

I am an investigator for the Metropolitan Life Insurance Company.

I have known the defendant, Fred Stevens about fifteen years. I know his general reputation in the community in which he lives as a peaceful and law-abiding citizen to be good.

VARDINO, VINCENT, called as a witness on behalf of the defendant, Fred Stevens, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Fischer:

I live at 6954 Laflin, Chicago. I have lived there about fifteen years. I am a tailor. I have been so employed by Hart, Schaffner & Marx for fourteen years.

I know Fred Stevens; he lives on my place. I am his landlord. I knew him about three years. I know his general reputation in the community in which he lives as a peaceful and law-abiding citizen. It is good. I know his general reputation in the community in which he lives as to truth and veracity. It is good.

[fol 555] SCHALK, RAY W., called as a witness on behalf of the defendant, James J. Barrett, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cavanagh:

I live at 6830 Chappell avenue, Chicago. My business is baseball and recreation. I have a couple of partners in Chicago and am in a bowling alley business there. I have been in that business about twelve years. Prior to that I was a baseball catcher. I was with the Chicago White Sox sixteen years, Buffalo three years, and Indianapolis two years.

I have known the defendant, James J. Barrett, from ten to twelve years. During that time I have seen him about twice a week in the winter time and about once a month when I came to Chicago in the Summer time. I knew Mr. Barrett's family. In the Winter time, we have played cards. He has come to my house once or twice a month and in the alleys where he bowls.

I know his general reputation in the community in which he lives as being a peaceful and law-abiding citizen. It is very good.

BURKE, JOHN H., called as a witness on behalf of the defendant, James J. Barrett, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cavanagh:

I live at 6930 South Shore Drive, Chicago, Illinois. I am vice-president and general manager of the Chicago Tunnel

Company and the Chicago Tunnel Transport Company. I have been so engaged for the past thirty-two years. In that business we deal in pick up and delivery service. A shipper may deliver his freight or pick it up and claim the five cents [fol. 556] allowance from the railroad or trucking company; or the trucking company may make a pick up or delivery and may claim the five cents allowance from the railroad providing the trucking company has a contract with the railroad to perform such a service. Either the consignee or the consignor may make a claim for such a rebate. If the trucking company has a contract with the railroad, it can make it.

I am familiar with the reasonable customary charge for cartage service in the City of Chicago for the years 1938 and 1939. To transport merchandise weighing approximately twenty-five hundred pounds from 5041 Lake Park Avenue to 39th Street and Lowe Avenue, in the form of six loaded boxes of the type appearing as Government's Exhibit 73, would be a minimum of Five or Six Dollars. An increase in weight would cause an increase in charge. In our business we average handling two thousand tons of less than carload merchandise per day. We have no occasion to ascertain the contents of those shipments, unless there is a breakage or a leakage. We make out bills of lading for a shipper at his request and insert a description of the goods and the other statements on it as he tells us. We have never had occasion to question the information so provided for the bills of lading.

I am a member of the Traffic Club of Chicago, a business club, membership of which consists of practically all the railroad presidents and executives, and of all the leading industries and their executives, if they have anything to do with transportation. Mr. Barrett is a member of that club. I believe he has been a member about eight or ten years. I have known Mr. Barrett between twelve and fifteen years. During that time I have seen him on the average of once a week. I visit him socially and know the members of his family. I know his reputation in the community in which he lives for being a peaceful and law-abiding citizen. It is good. I know his general reputation in the community in which he lives for truth and veracity. It is the best.

I have had occasion to use the services of the Empire Warehouses. My household effects have been in closed [fol. 557] storage there for four years. Only my wife and I had access to the room.

Cross-examination.

By Mr. Hopping:

My company does practically all intra-state business. I should have said inter-state. Practically all of our shipping is from one state to another. Our main office is 754 West Jackson Boulevard. Our company holds a permit for the transportation of alcohol. In order to ship alcohol we had to have our permit number. I do not know whether it is necessary that it appears on the bill of lading or on the package. There are requirements along those lines. In 1938, all shipments of alcohol had to be handled under such regulations. There have been some amendments to the law. I think the same requirements were in effect in 1937.

If a shipper brought to our dock packages of canned liquids, we would not know the contents, except from the bill of lading, unless they were leaking. If it had been described as paint, whereas it was actually alcohol, it would take a higher or lower rate and, therefore, it would be up to us to notify the Inspection Bureau. In case a container classified as alcohol is leaking, our employees are notified to call the shipper and so inform him. If the shipment were classified as something other than alcohol and the odor of alcohol was present when it leaked, I would notify the Inspection Bureau. That is of the American Association of Railways which is all under the Federal Government.

There are special regulations covering the handling of explosives and merchandise. As to explosives, the rules and regulations are plain. It must be designated what the explosive is. There are regulations that we will not handle any explosives through our underground railroads. As to these two types of shipments, we accept the designation of the shipper as to its nature. The only way we could tell that a shipment contained merchandise other than described is as I said before, either by leakage or breakage. We have [fol. 558] no right to open it for inspection. If we have reasons to believe they are mis-described, we report it.

Redirect examination.

By Mr. Cavanagh:

Cleaning fluid does not come under the tariff classification of explosives. If our company received boxes labeled rug

cleaning fluid, there would be nothing to create question in our mind relative to its being an explosive.

WAINER, ALLEN, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Dougherty:

I live at 823 Buena Avenue, Chicago, Illinois. I am married and have two children. My boy is eight years and the girl eleven. I live with my family. I have been living on Buena Avenue for the past three years. I have been in the United States Penitentiary at Atlanta, Georgia. I was convicted of conspiracy to violate the Internal Revenue Laws relating to intoxicating liquors. In November, 1936, I was indicted, for this in the City of Chicago.

Previous to that, I had been convicted in Peoria, Illinois in the Southern District of Illinois for conspiracy to violate the Internal Revenue Laws. I was indicted in Peoria in April, 1936. My trial in Peoria lasted the entire month of July, 1936. I pled guilty to the Chicago indictment about April 20th or 21st, 1937. I received a sentence of two years and six months upon my plea of guilty in Chicago. I surrendered myself to the United States Marshal and was then taken to the County Jail in Peoria. From there I was taken to the County Jail in Springfield and after about a month I was transferred to Georgia. I entered the penitentiary at [fol. 559] Atlanta, Georgia in June, 1937. I made application for parole, which was granted.

Defendant's Exhibit 9 is the paper I received from the Parole Board at the time my application for parole was made down there. Exhibit 10 is a Certificate of Parole from the Parole Board. Defendant's Exhibit 11 is a letter from the Department of Justice, Bureau of Prisons, which I received from the Supervisor of Paroles.

At the present time I am in the real estate management business. I manage property for various owners, collect rents and take care of the general maintenance of the building.

(Defendant's Exhibits 9, 10 and 11 were thereupon introduced into evidence.)

I have been in the court room during this entire trial. I heard the witnesses, Dracka and Skampo, testify. I did know them prior to the time they testified here. I did have some business dealings with them. The first I ever saw either Dracka or Skampo was sometime in the early part of 1936, in the spring. I sold them some alcohol. I shipped it to them in boxes according to their instructions.

I caused some storage space to be rented in the Empire Warehouse in Chicago. I did not go to the Empire Warehouse at the time I obtained the space. I looked in the classified directory, picked up the first warehouse, called and asked if they had space to rent. I was told they did, and so I got in touch with a party who went down and rented it. I never went to the Empire Warehouse myself.

I sold alcohol to Skampo and Dracka on about three or four occasions in the months of May and June, 1936. I saw them after that in Detroit. I then told them that I did not want to ship them any longer; I was through with the business; that I had quit. It is true that I did quit. It was about the end of June, 1936 that I quit. After that time, I did not ship any alcohol to them, or to anyone else in Detroit or the Eastern District of Michigan. I have not sold any illegal alcohol to anyone at any time or any place since the month of June, 1936.

In the Chicago indictment charging me with conspiracy to violate the Internal Revenue Laws of the United States, [fol. 560] there was involved a shipment of alcohol to Detroit, Michigan. All of the defendants in that indictment and connected with that shipment pled guilty at the same time I did.

Cross-examination.

By Mr. Hopping:

I do not know the exact date I made the shipment of alcohol to Detroit, which was described in the Chicago indictment. To the best of my recollection it was in the summer of 1936. I shipped it to a fellow by the name of Barney Lavine. I knew him. He is not named as a defendant in this indictment upon which I am now being tried. I do not think he is named as a co-conspirator in this indictment.

In addition to the defendants, Dracka and Skampo, named in this indictment, I do know the defendant Harry Braver-

man. I have known him about four or five years. I was in the alcohol business with him from about January, 1936, until my indictment in Chicago. That was not the one in November, 1936; it was my indictment in Peoria in April of 1936. The defendant Harry Braverman and I were not associated in the alcohol business from January, 1936 to April, 1936. It was just one occasion. That occasion was the time of the charge of the indictment in Chicago, which charged us with building a still. The alcohol business we are speaking of is an illicit business on which the tax has not been paid to any Government agency.

I have known Clarence Dracka since about March or April, 1936. I have known Henry Skampo about the same time. I first met Dracka at Wyandotte, Michigan. That was not the time I made an agreement to ship alcohol from Chicago to him in Michigan. It was at least two weeks before I started shipping alcohol. No one introduced me to Dracka. Dracka introduced me to Skampo.

I went to Dracka in the first instance for the purpose of talking to him about the alcohol business, though I had not met him before. I heard that he was in the business [fol. 561] of selling alcohol and that he had a used car lot in Wyandotte. I do not recall from whom I heard that. I did not learn it from the defendant Harry Braverman.

I know the defendant Harry Klein. I believe I have known him since 1934 or 1935. I did not see Harry Klein at the time I came to Detroit to meet Clarence Dracka. That time, I did not come to Detroit, I came to Wyandotte. I did not see Harry Klein on the occasion I met Henry Skampo. It was not about that time. I have been to 9660 Grand River Avenue once or twice in my life. There is a Book located at that place. I didn't go to the bowling alley. I was up in the Book. That is a horse bookie. I do not know the exact date I was there. I only know I have been there. It was not during the time from January to April, 1936. I know I was in Harry Klein's in the summer time. It may have been in the summer of 1936. I believe I talked to Harry Klein when I went in there. I did not talk to him about the alcohol business. I did not go there to see Harry Klein about any business. I was just coming through and stopped in to say hello.

I did not cause any particular room to be rented in the Empire Warehouse. I did not rent one. I never learned

the number of the room that was used as a result of my calling up there, except what Mr. Hinton told me. He might have told me that it was room eight something. It might have been any room. I did not specify any. I do not think I caused any more than one room of the Empire Warehouse to be rented. I do not recall if April 24, 1936 was the date I did that. I do not think that would be the correct date. I believe it was about May. I did testify on direct examination that it was the spring of 1936. I do not think it was April.

As I recall on my Peoria indictment I went down to see what it was about. I would say it was about the middle of May, 1936. The way I fix the time is because I spent so much time in Peoria. The way I fix the time in connection with my visits to Peoria is because I was indicted in April and I know I spent a lot of time there when I heard of the indictment. That indictment was for the illicit alcohol business also.

[fol. 562] It is true that I did business with Skampo and Dracka after I learned I had been indicted in Peoria. I did not use my own name, Allen Wainer, in renting a room at the Empire Warehouse, because I did not rent a room. I did not use my name when I caused a room to be rented. I did not direct the party to use any particular name. I just said, "Rent a room." I didn't direct the party to use any name. I do not know what name was used in renting the room in the warehouse. I do not know what name was used in shipping the alcohol outside of what Mr. Hinton told me.

It is correct that I shipped the alcohol to Skampo and Dracka according to their instructions. They gave me a name to ship it to. I think the name was the Perfect Carpet Cleaners. They gave me an address. I think it was the name of a cartage company in Wyandotte. I believe it was the Wyandotte Cartage Company, 3630 Biddle Avenue. I did not know what name to use as the consignor of the alcohol. Dracka and Skampo did not give me any name to use as consignor.

The person I employed to rent the room in the Empire Warehouse was an employee of the man from whom I bought the merchandise.

I have seen Exhibit 211, which has been introduced in this case. It is my statement to the Alcohol Tax Agents.

The statement is correct. It is the correct statement as I gave it to them at that time. I gave the statement on February 5, 1940 here in Detroit. I have read it over and know what it contains. I never heard the name J. Rosen. I do not believe that name was mentioned to me in connection with taking this statement.

When it says in the statement that I recall shipping alcohol consigned from Rug Life to the Wyandotte Cartage Company, it probably was the alcohol I shipped in accordance with my agreement with Dracka and Skampo, because that is approximately the time I did business with Dracka and Skampo. On the statement that time is fixed as April, 1936. That was the best of my recollection at the time I made the statement. I also stated there that I knew that [fol. 563] some name other than Wainer was used in renting the room in the Empire Warehouse, because this would have to be done. They couldn't use my name. I do not know what name was used. I did not leave a telephone number with anyone in the Empire Warehouse when I called up to rent that room. I believe I did the calling myself. I talked to some girl in the Empire Warehouse. It isn't possible for me to remember the number I called. I did not ask for anyone in particular in the Empire Warehouse. I talked with the first voice that answered the telephone. The alcohol was shipped in accordance with my agreement with Dracka and Skampo and was consigned in just about the same way as I have mentioned in the statement. It was consigned to Perfect Cleaners, but as for the Rug Life, I didn't know the exact name. This Rug Life appears to be in the period, so it must be that.

The way I knew that Dracka was in the alcohol business was because I was in that business before. I got Dracka just like I got all other customers. I heard of him being in the business. I went to see him. That is how I obtained all of my business. I did not give him any references when I went to see him about it. There was evidently a trucking company used to ship the alcohol sent to Dracka and Skampo. I do not know whether it was the Roadway Trucking Company or not. There were about four or five shipments that were sent. I did not get paid for all of these shipments. I didn't get paid on the last one. I did get paid on all the others. I do not know how I got my money. I have been trying to find that out ever since I have been

indicted in this case. I do not know whether it was brought to me or sent to me. I cannot recall. I believe at the end I did come over and get the money on some occasions from Dracka and Skampo in person. I met them in Wyandotte. I do not recall as to the others how I received them.

I doubt if April 30, 1936 would be the approximate date of one of the shipments I sent to Dracka and Skampo. By looking at Exhibit 211, I cannot fix the time as about April 30, 1936. About May and June would be the date of the four shipments I have referred to.

[fol. 564] I believe I heard Skampo testify that he and Dracka had received alcohol from Harry Braverman just prior to receiving it from me. I did not know they were receiving alcohol from Harry Braverman before I came over to see them. So far as I know I did not obtain the tools necessary to pack these boxes of alcohol. I do not know how they were obtained, or who put them in the warehouse.

I never met Fred Stevens before the beginning of this trial. I met him here. I have never been in the Lake Park Warehouse at 5041 Lake Park avenue.

It was in the Fall of 1936 I turned over the business to Dracka and Skampo. I would not say it was the middle of November, I do not know the exact month. I only recall seeing Dracka at that time. It was somewhere in Chicago. They claim a hotel. I heard the testimony as to what happened at that meeting. I do not recall telling Dracka to go and see Fred Stevens in the Empire Warehouse. I do not recall who I told him to see. I told him to go to the warehouse. I do not recall that I gave him the name of the person to see there.

I did not make arrangements for the purchase of empty boxes in which to pack the alcohol. The statement does say that I was buying from Steve Scavoni, and that I asked him to pick up the boxes I used in shipping the alcohol. That is the way it was done. I do not know from what companies these boxes were purchased. I did furnish the money to the drivers to buy the boxes. That is not the way the cartons were obtained in which the cans of alcohol were packed. They were obtained with the purchase of the alcohol. I do not know whether you would classify this as a wholesale alcohol business or not. It was just a sale. I did not sell it to the people who drank it. I sold it

in five gallon cans. I did not put any tax stamps on the cans. Some years back I sold smaller containers than five gallon cans. That was not during this period of 1936. It was all five gallon cans. I do not know if those five gallon cans were packed in boxes similar to these. I do not know about boxes; the boxes that were similar. I told them to get boxes. They were packed four or six to a box. I think I received about ten dollars a can for the alcohol. [fol. 565] I do not know the price of cut alcohol at that time. I do not know whether the price I received would be called a wholesale price or not, because I do not know what the other prices were. I know what I paid and what I had to get. I paid nine dollars a can for the alcohol I sold for ten dollars. I did not have a special occupational tax stamp to deal in alcohol. I did have a license at one time to deal in alcohol. This was in Galesburg, Illinois, from 1934 to 1935. The license did not expire in 1935. The business continued on, but I stepped out. I turned the license over to the successors in this business. Except for that, I had no license to handle alcohol.

I never gave bond to the United States Government or any agency of it to enter into the distilling business. I never registered any distillery apparatus with the Supervisor of the Alcohol Tax Unit in any district of the United States. I did not pay the transportation charges for the alcohol that was shipped to Dracka and Skampo. It was all shipped C.O.D. Dracka and Skampo paid the transportation charges as part of the cost of receiving the alcohol. I cannot fix the first day of May, 1936 as the date of one of those shipments of alcohol. It happened so long ago. At no time did I ever ship alcohol to the defendant Harry Klein. I do not believe I ever obtained any alcohol I sent to Dracka and Skampo from anyone other than the Steve Seavoni, who I have named in my statement. Recently I have been thinking that after the Government seized the still I had in Peoria, I believe I had some things left which I stored away for a long time. I did not have any interest in the still from which Steve Seavoni delivered the alcohol. I suppose Steve owned it. He has since died. I do not know of anyone else who was interested in the production of that alcohol.

I know the defendant, Morris Frank. I met him in Galesburg, Illinois, some years back. That was about 1932.

I do not know if I had some business conversation with him at that time: I probably did.

Q. Well, will you refer to Exhibit 211, please, and state if you recall any conversation you had with Morris Frank?

[fol. 566] Mr. May: If the Court, please, I desire to interpose an objection, that Exhibit which has been shown to this defendant, as I understand, it has only been used against that defendant and not against any other defendant, and if it is for the purpose of showing Frank's connection, then I object to it, I don't think that it is proper as against Frank. It may be proper examination as far as he is concerned, but not as far as the defendant, Frank, is.

The Court: Well, as to him it should go in, or should he leave it out?

Mr. May: I think it is of such prejudicial—

The Court: I don't ever know what it is.

Mr. May: It has been introduced.

The Court: Don't spend any time trying to get the witness to read it, it takes too much time. Read the whole thing. It takes too much time to get a statement here and then ask if he can find it in there.

Mr. May: Also, if the Court please, as far as 1932, it is very remote as far as this case is concerned, and I will object to it.

The Court: I don't know what is coming.

By Mr. Hopping:

Q. I will read the third from the last paragraph of that statement as follows:

"I had been shown a picture of Morris Frank, a resident of Chicago, and can identify this picture as being a picture of the man known to me as Morris Frank. Morris Frank contacted me at one time when I was doing business in Galesburg, Illinois and wanted to buy some alcohol from me." Who is the Morris Frank you refer to in this statement?

A. Morris Frank in the courtroom here.

Q. The defendant in this case. Now, had you had any other dealings with Morris Frank, the defendant in this case?

A. I never had any dealings with him.

Mr. May: Just a minute, please, I will object to that and ask it be stricken, and the jury instructed to disregard

it as far as the defendant Frank, any portion of that statement—

[fol. 567] The Court: He has now made it, it is his oral statement. He did say that:

Mr. May: I will object to that statement coming from him, oral or otherwise.

The Court: You mean one defendant can't make a declaration against the rest of the co-defendants, is that your theory of it?

Mr. May: That isn't my theory, your Honor.

The Court: That is the effect of it.

Mr. May: That isn't my theory at all.

The Court: I don't know, those defendants go on the witness stand and detail their operations and so forth, they may hit another defendant, I don't know, I can't stop him.

Mr. May: Exception, please.

I believe I was in the illicit alcohol business in Galesburg, when Morris Frank came to see me there. I have never been in the illicit alcohol business over a year at a time. I have been in and out of it. I have been in the business about four years. I think it was from 1930 to 1932; a part of 1934 and part of 1936. I never had a permit to remove alcohol from a distillery.

I was shown Government's Exhibits 7 to 13 at the time I made my statement to the Alcohol Tax Investigators. I did not identify them as descriptions of the shipments of alcohol I sent Dracka and Skampo. I said if they covered the particular time I was shipping they were. It seems as though only Exhibits 10 and 11 cover the same period of time. Exhibit 10 bears date June 25, 1936 and 11 bears the date May 1, 1936. Exhibit 12, which bears April 30, 1930, is just about the same period. I do not think Exhibit 13, dated April 25, 1936, is. I know I was in Peoria at the time. I do not think all of those were part of the alcohol I sent to Dracka and Skampo.

At the time Dracka and Skampo took over the shipping point in the Empire Warehouse, they did not tell me that they wanted to ship alcohol in the same way I had done; they told me they wanted my connection where I work out of. By connection, I mean the location in the warehouse.

[fol. 568] Cross-examination.

By Mr. Frederick:

I did testify that I have known Mr. Braverman about four or five years. I believe about 1934 was the first I knew him. I did state on direct examination that I was in an illicit alcohol business with him. That was in 1935 in Joliet, Illinois. That is one of the offenses for which I was convicted. That was a conspiracy for violation of the Internal Revenue Laws. It had to do with the operation of a still. I was indicted in November of 1936. We were both indicted. Mr. Braverman was likewise sentenced under that indictment. That still ceased operation in 1935. Following that, I did not have any dealings with Mr. Braverman relating to illicit alcohol. I had no business dealings with Mr. Braverman between 1935 and 1939.

Mr. Braverman did not have anything to do with my becoming acquainted with Mr. Dracka. Prior to my meeting Mr. Dracka, Mr. Braverman did not tell me that I should go and see him. Mr. Braverman never told me that he knew, or that he had had any relations with Mr. Dracka. Mr. Braverman did not have anything to do with my acquaintance with Mr. Skampo. He never told me he knew Mr. Skampo.

During the time I was engaged in the operation of the still in Joliet, I did not know any of the defendants named in the indictment for which I am now on trial, outside of Mr. Braverman, except that I had met Franks once. I had nothing to do with, nor did I know any of the other defendants. In operating the still in Joliet, I had nothing to do with the Empire Warehouse. That was some years later.

Mr. Braverman did not have anything to do with my contract with the Empire Warehouse. As to whether he ever visited the Empire Warehouse following my telephone call with reference to leasing of a room, I would not know, because I do not know his business. I do not know that he did; I never even heard that he did.

I never had anything to do with the operation of a still in Racine, Wisconsin, mentioned in this indictment. I never had anything to do with the transportation of whisky [fol. 569] or illicit alcohol from a still in Racine, Wisconsin to the City of Chicago.

I had nothing to do with the shipment of illicit alcohol from the City of Chicago to the City of Detroit in January,

1936. My first participation in the shipment of any alcohol from Chicago to Detroit was either the end of April or the first of May, 1936.

Cross-examination.

By Mr. May:

In 1932, while I was in Galesburg, Illinois, I had a coffee shop and an automobile business. My brother was associated with me in business there.

When the defendant Frank came to me at that time, I presume he discussed alcohol with me. I do not know for certain whether he did or not. I do not know whether he came down to discuss the financing of a car with me. I do not remember that. I do not exactly remember what he came down to see me about.

Cross-examination.

By Mr. Cananagh:

My reason for looking in the classified directory was to get a warehouse. I never had any prior experience with the Empire Warehouse. To my knowledge, no one else engaged in the illicit alcohol business had ever had anything to do with the Empire Warehouse. At the time I went to the classified directory, I had no particular warehouse in mind. I cannot tell now what particularly attracted my attention to the Empire. I know it was an enlarged ad in the telephone book. I did make a call to the Empire Warehouse and spoke to some woman. I asked if they had space that they would rent for shipping and packing our merchandise. That was my only conversation, except that she asked me my name. I didn't give it to her. I told her I would be out to see her. There was no discussion relative to storage charges. I do not think I talked to anyone else connected with the Empire Warehouse at [fol. 570] that time. Previous to this telephone call, I had not talked to anyone at the Empire Warehouse that I know of. I never talked to James J. Barrett at any time. I never saw Mr. Barrett prior to the trial of this case. I never to my knowledge talked to Mr. Barrett over the telephone. At no time did I know Fred Stevens. I never talked to him prior to our appearance here. So far as I know, I never talked to Mr. Stevens over the phone.

The only time I ever visited the Empire Warehouse was since this trial. I wanted to see where it was located. I was not in there at that time. When I say "visited" I mean I just drove by and looked at it. That is since this trial has been in progress. Prior to that I did not know the location of this particular warehouse.

After my telephone conversation, I did send some one over there. I sent the party I was doing business with. I had him send someone over there and rent a place for me. I do not know with whom he discussed the rental. I never talked to him long enough to discuss that. I do not know if he had any conversation with Fred Stevens or with Mr. Barrett.

When I talked over the telephone, I told them I wanted a room. I did not specify the dimensions. The fellow I was doing business with told me how much was charged for the room. I believe it was thirty-five dollars. He did not tell me what that charge included.

I did not tell the girl with whom I spoke the nature of the business I expected to transact. At no time, did I mention alcohol to her.

Q. Referring to your statement for a moment, Mr. Wainwright, I am reading now from the fifth paragraph: "I returned to Chicago and rented a space for the crating and boxing of alcohol in the Empire Warehouse at 5041 Lake Park avenue, Chicago, Illinois." Is that the telephone conversation to which you now refer?

A. Yes, sir.

I had no other conversation with any representative of the Empire Warehouse, except the telephone conversation referred to. I do not recall how long after the telephone conversation my representative went to the warehouse. I [fol. 371] do not know the name the space was leased under in the warehouse. I never knew under what name it was leased. I did not tell my representative the name to use. The representative knew what this space was to be used for from the fellow that sent him. I would not know what information he gave the representative of the Empire Warehouse about the merchandise being handled. I do not know whether or not he told him. I do not know if he told him it was rug cleaning fluid or germicide.

My operations continued in the Empire Warehouse about two months or less. I paid the storage charges for the Em-

pire Warehouse to this representative of mine. I do not know what the exact amount was. The statement brings it out as being thirty-five dollars. I do not know how the merchandise was brought into the Empire Warehouse. I know I specified to Steve that it had to be in cartons. The alcohol should have been delivered to the Empire Warehouse in cartons. I do not know whether the Empire trucks hauled any of this merchandise at any time or not. I do not know the mode of transportation used to bring the merchandise to the warehouse. I know who caused it to be brought into the warehouse, but I do not know the exact party who brought it.

I cannot say whether my representative was present in the Empire Warehouse when the merchandise was brought in or not. I operated there for a couple of months. I do not know what disposition was made of the lease at the end of that time. At the time I discussed leasing space in the Empire Warehouse, I did not ask for any specific room or any specific accommodations. There was nothing in my conversation that would cause suspicion. I do not recall when the last shipment was made from the Empire Warehouse in connection with my activities. I do not know whether the account remained open at the warehouse, or not.

I never had occasion to discuss the operation at the warehouse with my representative. My next activity in connection with the Empire Warehouse was when Mr. Dracka came to see me. I did not meet Mr. Dracka by appointment. I saw him in Chicago in connection with this matter either [fol. 572] late in the Summer or early Fall. At that time he wanted to know if I could get him some alcohol. I told him I could not, I was no longer in the business. This conversation took place in a hotel, I believe. I do not recollect who was present. There was nothing else said at that time. I saw Dracka about two weeks later, I believe in the same place. He called me up. He asked about the warehouse that I had used before. I do not know whether he knew about this particular warehouse or not. I told him where the warehouse was located.

I first learned the location of the warehouse at the time I tried to rent space. There was no reason why I occupied the warehouse on Lake Park avenue rather than any other. It is hard for me to remember when I first learned that the unit at 3041 Lake Park avenue was to be used in my busi-

ness. I may have been told by the girl that first day that space was available at the Lake Park avenue. That is probably the reason I sent the boy over there. At that time I made no inquiry as to any particular unit or location. It has only been during the trial that I learned how many warehouses the Empire has in the City of Chicago. I did not know prior to this.

My conversation with Dracka about leasing the Empire Warehouse was in the early Fall. Dracka wanted to know the location of the warehouse I was using. I gave it to him. He asked about tools. I told him I did not know whether there were any tools left or not; if there was he could have them. At that time I did not know any of the employees at the Empire Warehouse. I did not know Fred Stevens.

I do not think I ever called the Empire Warehouse after I vacated there. To my knowledge, I never received any phone calls about that space, tools, or equipment. I do not know whether a J. Rosen ever received any calls or made any calls to the Empire Warehouse after I ceased operations, because I do not know who he is. I have never learned who he was.

I never had occasion to have any conversation with the occupant of room 549 of the Empire Warehouse subsequent to the time he went in there. I do not know whether the [fol. 573] merchandise came in touring cars or a truck. I wouldn't know how it was taken out. I do not know whether the Cushman Motor Delivery brought the merchandise in there or took it out.

When on direct examination I said that Dracka and Skampo told me they wanted my connection, I meant the location of the place. There was no conversation between Skampo, Dracka and myself concerning my activities out there. As to whether anyone connected with the Empire Warehouse knew the nature of my business I could not say, because I did not know anyone at the warehouse. I did not tell Skampo and Dracka the nature of the business that had been transacted at the warehouse during the time I operated, because they knew. They asked me if it was the same place.

I do not know when the term "Rug Cleaning Fluid" first developed in describing this merchandise. I do not know whether that term was used by my representative in the warehouse or not. After I told Dracka and Skampo the location of the warehouse, I do not know what hap-

pened. They just left me; that is all. I never saw Dracka and Skampo after that occasion.

I do not know whether my representative ever called the Empire Warehouse and instructed them to turn over the tools and equipment of room 549. I do not know if my representative ever left a phone number at the Empire. I do not know if my representative continued to pay rent for the occupancy of room 549 after the date my activities ceased.

I had no conversation that I know of with Dracka and Skampo about paying any back rent. I do not know Dan Carroll at the Empire Warehouse on Lake Park avenue. To my knowledge, I never had any conversation with him over the phone. I did not know him at any time. I do not recall whether Dracka and Skampo were together at the time I told them or not. I do not believe I told them to see anyone in particular at the time I told them the location of the warehouse.

I never before saw the exhibits that have been here identified as being in the Empire Warehouse. I would not [fol. 574] know if they were in room 549 of the warehouse or not. I do not think I had anything to do with the purchase or leasing of those exhibits. I never saw Government's Exhibits 7 to 13 before I came here, that is, for arraignment. I identify them because they happened to be about the time I was doing business with Dracka, that is some of them.

I do not know how that merchandise was delivered to the Roadway. I could not say that it was delivered to the Roadway. I never saw a bill of lading on this before. I do not know who made out the bills of lading. I do not know what services were performed by Fred Stevens in connection with these shipments, if any. I do not recollect anything being said about the service I was to expect when I talked to the girl at the Empire Warehouse. There was no conversation about elevator service. It just related to renting the space.

Recross-examination.

By Mr. May:

I did not see the defendant Frank from 1932 until I was arrested on this case in Chicago, which was about a week before Christmas, 1939. I have not seen him from 1932 to 1939.

Recross-examination.

By Mr. Hopping:

In each instance in which I have used the word "merchandise" in my testimony, the term is referred to illicit alcohol.

I learned that Clarence Dracka was in the illicit alcohol business about two weeks or maybe a month before I began doing business with him. I was not in business with the defendant Harry Braverman at that time. I learned that through my contacts in the illicit alcohol business. I have made arrangements to handle alcohol with other people that I learned about in the same way. I do not know whether the defendant Harry Braverman knew Clarence Dracka before I did, or not.

[fol. 575] BARRETT, JAMES J., called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cavanagh:

I live at 10007 South Wayne avenue, Chicago. I live there with my wife and three daughters. My daughters are fourteen, twelve, and seven months of age. I am married to the daughter of Mr. William F. Carroll, President of the Empire Warehouses, Incorporated. I married her in January, 1938. I was married for ten years prior to that. My first wife passed away in 1932. At the time of the death of my first wife, I had two daughters who were three and four years old at the time.

I have been in the employ of the Empire Warehouse nearly seventeen years. I was born in Chicago. I attended grammar school and two years at DeLasalle High School. I was the oldest of five and had to go to work. After leaving high school, I worked for the Drovers National Bank as messenger boy for about two years. I then went to the National City Bank in Chicago as messenger and later to a bookkeeping position. I was there employed until the war started, when I enlisted in the navy in 1918. I remained in service until the first of January of 1919. I was honorably discharged after the war was

over. Following my discharge, from the navy, I went back to the National City Bank hoping to obtain a position. They informed me there were no positions open, and since I was interested in bookkeeping I studied accounting in the Knights of Columbus Night School in Chicago. I was in this school about a year.

Shortly after entering, one of the teachers asked me if I wished to go out in answer to a request that they had for a bookkeeper. I did go and obtained a position with the Harder Storage Company. They were located at 40th street and Calumet avenue, Chicago, and were in a business similar to the one I am now in. I started there as a [fol. 576] bookkeeper and later handled traffic. By that, I mean I handled the correspondence in connection with shipments they made for accounts.

I was there about five years, and in 1924 I had an offer from the Empire Warehouse. I was hired by Mr. M. A. Carroll, then president, as traffic manager. In that position I had charge of the correspondence and collections of money or funds for shipments that were made by the company.

I was married first in 1923. I was traffic man for the Empire Warehouses about three years. They then offered me a position as salesman. As such, I made contacts with large corporations in an effort to secure business. The purpose was that when an employee of a large corporation removed from the city, his household goods had to be shipped. Since there was a large volume of this, I sought this type of business for the company. I worked at this for about four or five years, that is down to 1931, or 1932, when I was promoted to secretary and general manager. I believe it was the latter part of 1931 that I was made secretary.

The Empire Warehouses have sixteen pieces of real estate in Chicago. This includes seven warehouses. We do not have any properties in the vicinity of 22nd and Rockwell streets. The buildings are commercial type of buildings, strictly warehouse properties. Our warehouses are of fire-proof construction, open space, that is floors that have nothing more than columns of construction visible. Many floors have private compartments on them. The warehouses have approximately one million cubic feet of storage space.

My office is at 5153 Cottage Grove avenue.

(At this juncture, the testimony of Mr. Barrett was interrupted to present the following witnesses.)

[fol. 577] COTTER, LEO A., called as a witness on behalf of the Defendant Fred Stevens, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cavanagh:

I live at 2845 East 77th street, Chicago. I am chief underwriter for the Federal Housing Administration for the State of Illinois. I have been so engaged for the past five and one-half years.

I have known the defendant Fred Stevens for the last fourteen years. During that time, I have had occasion to see him quite frequently. I know his reputation in the community in which he lives for being a peaceful and law-abiding citizen. It is good. I know his general reputation in the community in which he lives for truth and veracity. It is good.

WIGHTMAN, WILLIAM, called as a witness on behalf of the Defendant James J. Barrett, after having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cavanagh:

I live at 9222 Bell Street, Chicago, Illinois. I am in the contracting and building business and have been so engaged for the past twenty-six years.

I have known the defendant James J. Barrett for about twelve years. During the time I have known him, I have seen him two or three times a week. I know his reputation in the community in which he lives for being a good and law-abiding citizen. It is the very best.

[fol. 578] McSHANE, MARY L., called as a witness on behalf of the defendant Fred Stevens, after having been first duly sworn, was examined and testified as follows:

Direct Examination:

By Mr. Cavanagh:

I live at 7730 Crandon Avenue, Chicago. I am a book-keeper and officer supervisor for the Empire Warehouses. My offices are at 5153 Cottage Grove Avenue. I have been employed by the Empire Warehouse in the same capacity over twenty-five years.

My duties are to receive the papers from the branch offices and all papers pertaining to the company, check records or see that they are done under my supervision, as well as the general ledger entries, profit and loss statements, and the general balance sheet at the end of the month and to cooperate with the accountants.

I recall an account in my office under the name of J. Rosen. There was nothing unusual surrounding that account. It came as any other. I had nothing to do with the renting or leasing of the space in connection with that account. That account was opened in our warehouse at 5041 Lake Park Avenue. The record from there was sent to us as is done in all of our warehouses. When a room is rented, there is a copy of a scrip sent to the main office with a lot number so as to make a record. If it is merchandise, it is scripped in under a lot number and tagged with a name on it.

That procedure was followed in the Rosen account. I do not recall just when that account was opened.

I recognize Government's Exhibit 220. That is the copy that came to us from our branch warehouse, and on the information contained in it the account was opened. This is called a warehouseman's scrip. It is in the handwriting of Mr. Fred Stevens. There was nothing unusual about the opening of this account. This does not tell us what the space or accommodations were used for. It merely gives the name, lot number, room number, and the rate was given [fol. 579] by Mr. Dan Carroll of the warehouse it came from. I do not recall the exact amount charged on this particular account. I do not know the prevailing rates for storage in Chicago during the time that account was opened, because they have fluctuated.

I identify Government's Exhibit 218. It is a warehouseman's scrip for Rug Life Incorporated. That is the memorandum sent our office opening the account. It is in the handwriting of Fred Stevens. There is nothing unusual in the opening of that account.

A lot number appears upon Government's Exhibit 220. The warehouse men carry consecutive numbers in each of the warehouses. Every account opened up, whether for renting of a room or receiving of household goods is given a lot number as they come in. The lot number of this particular account is 15757. The initials EMP indicate our warehouse with that. That refers to the Empire, or the warehouse at 5041 Lake Park Avenue. On Government's Exhibit 218 there appears lot number 15896. I do not recall whether that particular account followed the Rosen account. I do not recall any conversation had in connection with the opening of that account, except as to the right.

I recall having several telephone conversations with Dan Carroll on these accounts.

As soon as the warehouse scrip is received by me, if no rate appears, I telephone the warehouse and talk to Mr. Carroll to obtain the rate. That was done in connection with this. There was no other conversation that I had with Mr. Carroll about this account. I do not recall that I ever had any conversations with Mr. Stevens on this account.

Government's Exhibit 216 is the scrip indicating to us to open an account for Rug Life, lot number 16219, under the rate on this with the room number. The rate is Thirty-five Dollars a month. It is in Dan Carroll's handwriting. I do not recall any of the circumstances surrounding the opening of this account.

The reason for the different lot numbers on these two exhibits is because there is a difference in date. The [fol. 580] numbers run consecutively. The earlier date was a lower lot number. All these were made out in the regular course of business. I received these scrips. The account is then written up on our books. I give the orders to the accounts receivable bookkeeper. I have charge of the opening of these accounts.

Defendants' Exhibit 12 is a copy of the record of the Empire Warehouse pertaining to the J. Rosen account. That copy was made by Thulin, Johnson and Fraser. I checked all that appears on this with them. It is a true and correct record of the account, as disclosed by the files under my supervision.

Defendants' Exhibit 13 is a copy of the records of Rug Life, Incorporated account, made by Thulin, Johnson and

Fraser from our records. Defendants' Exhibits 14 and 14A is a copy made from the records of the Empire Warehouse on the Rug Life Incorporated, by Thulin, Johnson and Fraser. From Exhibit 12, I would say the J. Rosen account was opened April 24, 1936 and closed November 24, 1936. During that time, it was an active account. Mr. Dan Carroll telephoned me that this account was to be closed. It was out to records, so we marked it so.

Exhibit 13 covers the time from November 18, 1936 to May 18, 1937. The only conversation I recall on this particular account was as to rate. If the scrip did not cover the rate, I had the conversation with Mr. Dan Carroll as to the rate to be charged.

Exhibits 14 and 14A are the records taken from our files and a copy made, after the account had been closed. Those exhibits cover the cartage, storage, and handling from January 3, 1939 to and including June, 1939. I searched our records in connection with these particular accounts at Mr. Barrett's request. They disclose all the transactions had in connection with them.

Referring to Defendants' Exhibit 12, there is nothing there to show that the Empire Warehouse did any cartage in connection with that account. I have no recollection that we did any. Evidently, we did not.

[fol. 581] With reference to Exhibit 13, it does not appear that any cartage service was rendered in connection with this account.

In looking at Defendants' Exhibit 14, the records show there was cartage service in connection with that account. This service started January 5, 1938, and upon various dates up to December 27, 1938. Exhibit 14A shows that starting January 3, 1939, cartage was done up to June 13, 1939. At no time was there anything unusual in connection with these particular accounts. During the time these accounts were active, I did not have any discussion about them with anyone in the Empire Warehouse Company, except Mr. Carroll, as I just testified.

I could not say whether Mr. Stevens ever saw any of the Auto Van Removal Tickets in Government's Exhibit 221. The drivers keep these tickets. The warehousemen do not have them. I have seen these particular scrips before. Mr. Barrett asked me to look up the records and take out our tickets. I went through the records and got them out under the different dates. I made a thorough

search in connection with obtaining these particular records. It was some little time ago that I saw these records before today. I presented these to Mr. Barrett. At that time Mr. Barrett called me in and asked me to get all the papers in connection with these two accounts. I looked them up and brought them in to him. When he asked me, there were some gentlemen with Mr. Barrett, whose names I do not know. I do know that Mr. Barrett did not know the contents of these files prior to that time.

The scrip I received is filed in our office under my supervision. Mr. Barrett would not see these scrips. There would be no reason to give them to him. I did not give him the scrips until the records were asked for. That was in the same connection as these auto van removal orders.

The duties of our warehousemen is to receive goods for storage; also, supervise deliveries out of the warehouse, take customers and merchandise up in the elevator, handling the crating and shipping of shipments in the [fol. 582] warehouse; make out express tickets, bills of lading, delivery tickets, or delivery receipts, and do whatever the customers require.

This account was handled in the regular course on the books. The delivery tickets are turned over to me from our moving department, checked and filed. If there is a bill of lading or freight bill that comes in with the merchandise, it is attached to these tickets which come to my office. Merchandise sometimes comes into a warehouse under one name and is changed to another. I would not say that the name was fictitious. There is a change in the name very often, both in goods coming in, and sometimes after the goods have been received the name is changed.

Cross-examination.

By Mr. Hopping:

The first year or two I worked for the Empire Warehouse I was bookkeeper and stenographer. After that I had full charge of everything. I am office manager at the main office of the accounts. That means the Accounting Department as well as cash customer calls. In other words, the services in the office. The bookkeepers as well

as the cash are directly under my supervision. The warehousemen are not under my direct supervision so far as orders are concerned, but so far as the records are involved, they are. That is, after they send the records into me. The branch managers are only under my supervision in so far as the records they send are concerned. The same is true of the Trucking Department.

Mr. James J. Barrett is the executive officer who has supervision and control over the warehousemen. That is Mr. Barrett who is the defendant in this case. Mr. Pat Carroll has direct charge over the Trucking Department. Mr. Barrett is over Mr. Pat Carroll. Mr. Barrett also has direct supervision and control over the branch managers. I have no part in Mr. Barrett's work of supervising branch managers, warehousemen, or Trucking Departments. If the records are incorrect, I take them up with Mr. Barrett for correction. When there is [fol. 583] something wrong with the records, I talk directly to the warehousemen. If any unusual situation develops, I take it up with Mr. Barrett. Mr. Barrett has a private secretary, though she is not in his office. Mr. Barrett's office is in the front of the warehouse on the same floor as is my office. The records are kept in the general office, where I am. That is on the same floor as Mr. Barrett's office.

With reference to the warehouse scrip on the J. Rosen account, since the rate is not on there, I telephoned Mr. Dan Carroll. I am not speaking of the general practice, I am referring to that particular account. I remember it.

Mr. Dan Carroll called me about the Rug Life Account and sent the scrip in. I remember that. To the best of my recollection, there were two cases that I recall talking to him on the opening of the Rug Life account.

In looking at Exhibit 218, dated November 18, 1938, I do not recall talking to Mr. Carroll about the opening of it. I do recall talking to Mr. Carroll about the Rug Life account. I do not recall the conversation. It was at the time both accounts were opened. I did talk with Mr. Dan Carroll about the opening of the account on November 18, 1936, as shown on Exhibit 218. That conversation was that there was a scrip coming in under the name of Rug Life, Incorporated. We had no address and the people were renting the room at Thirty-five Dollars a month. I recall that, because that is the conversation on all rooms

that are rented. They vary on rates, and our warehouseman telephoned. I recall talking to him on this, though I would not say positively the conversation.

I have just testified to the conversation that I have on all such occasions. I do not recall definitely the conversation I had with Mr. Dan Carroll on November 18, 1936. I may, or may not have had a conversation with him at that time about that particular opening account shown on Exhibit 218. I do not definitely recall any conversation I had with him on January 5, 1938 with reference to Exhibit 216. I do not know whether Mr. Carroll had anything to do with the opening of these two accounts, except that I talked to him about the account. I do know that I talked to him about the Rug Life account and about [fol. 584] the scrips, when they came in. What the conversation was, I could not tell. I did not talk with anyone else about these accounts.

I do not know who showed the rooms to the tenants who occupied room 549 at Lake Park Warehouse. I do not know who fixed the rate to the tenants when they took the room. I do not know whether anybody took up with Mr. Barrett the rate for room 549 at the time the Rug Life account was opened. That might have been done without my knowledge. I had no conversation with Mr. James J. Barrett about the opening of these accounts, when they were opened.

I have charge of all the records regarding the rental of room 549. The warehouse have a copy of the scrip and I have a copy that comes to the main office. I keep records of the amount of rent charged and paid on the rooms in all the branch warehouses. I have a record of the money received for the rental of room 549 for the period of time covered by the Rug Life account. I kept such a record throughout the period of the J. Rosen account, which is referred to in Government's Exhibits 220 and 220A. They were different accounts. The J. Rosen account was set up as a separate and different account. This account was prior in time.

I did not have occasion to refer to the J. Rosen account at any time in connection with opening the Rug Life account. There was a balance after the J. Rosen account was closed, and Mr. Dan Carroll called me to tell me that it was taken over by the Rug Life, Incorporated, and would be paid by that company. I do not recall the date

I referred the Rug Life account to the J. Rosen account. I could probably tell if you show me the record. I do have a recollection that payments came in on the Rosen account after it was closed. I wasn't informed that the Rug Life account was being maintained by the same people who had had the Rosen account. Mr. Carroll told me that the Rug Life people were taking over the Rosen account. That was after November 18, 1936, when the Rug Life account was opened.

None of our bookkeepers deal directly with the branch managers. All dealings come through me, except information when they call on an account. I do not know if Mr. Carroll might have called and asked one of the bookkeepers the balance due on the Rosen account, nor do I know whether Mr. Stevens might have. I know Mr. Stevens is the warehouseman at the Lake Park unit.

At no time did I take up with Mr. Barrett the balance due on the Rosen account. At the time accounts are closed out, they are usually paid. However, if the branch manager knows the customer, the balance will be charged and extended. We keep the account open and I call the office every thirty days. As far as charges on the account, I take it up.

Exhibit 220A does not say "Brought in by Stevens." It says it is listed by Stevens. It appears that goods were brought in from the outside. A customer may have brought it in himself, or an outside trucking company. The customer's name is J. Rosen. This record was filed in my office. The entry that "this party using room for boxes of germicide" was on it at the time it was filed. The account was left open a few months after they quit using the warehouse. I do not recall just how long, though I knew at the time. I did make an effort to close the account, or collect the back rent, by taking the matter up with Dan Carroll. I called him each month and payments were coming in on it. That was after the account had been closed on our records. When a balance is not paid, I take it up every thirty days. The records show that that account was paid right along until the last balance, which was paid in installments. I do not recall whether the account was paid every month from the time it was opened. May I see the record? This does not show the dates of payments, so I couldn't tell you. This is a complete transcript of the charges.

Exhibit 12 does not show everything that is on our books with respect to the Rosen account. It does not show when it was paid. From this, it does not show if it ever was paid. I do recollect that the Rosen account was paid monthly. I do not know off-hand how many months. All I can go by is the record here. I do not know off-hand whether it was paid the first month they [fol. 586] occupied room 549. The 1936 account was paid in different months, though I do not know what month it was started, or what month they paid.

I do not recall any discussions in the main office about the Rosen account being closed out before it was closed out. The account was closed out because Dan Carroll informed us that the goods were removed. I took my orders from Dan Carroll to close out this account. I remember that. I do not know the date he gave me the order. I do not know without the record whether it was before or after the Rug Life account was opened.

I do not know who fixed the charge to the Rug Life people when they opened their account, nor do I recall who showed them to the room in the warehouse. I do not know if Mr. Stevens talked with Mr. Barrett about the Rug Life people taking the Rosen account. Though Mr. Stevens did testify that he talked with someone at the main office about opening that account and was told that they were coming over, I did not tell him anyone was coming over to take over the Rosen account in the Lake Park warehouse. I do not know who did.

Q. Next question, Mr. Stevens: "Is this statement true: Sometime during 1936, I received a call from the main office regarding two men who were coming to the Lake Park Warehouse to negotiate for the rental of space. A. True, to this extent: That was the Rosen account which was started at that time." Do you know anything about that occurrence?

A. No, sir.

Q. Next question: "A short time later, Mr. Dan Carroll, Manager of the Warehouse, called me, stating the men had arrived. A. That's right. Q. I took the two men through the warehouse and showed them the rooms we had for rent. A. That's right. Q. They chose room 549 as the room they would like to rent. A. That's right. Q. Our regular price on a room of this type is \$17.50 per

month, plus half of the amount when the goods are brought in, plus half that amount again when the goods are removed from the warehouse. A. Yes, sir. Q. Does that apply to the original renting of this room to J. Rosen? A. True, because we hadn't found that file." [fol. 587] Do you know what file Mr. Stevens was referring to that was found, about the J. Rosen account?

A. No, sir.

As to whether I found any file about the J. Rosen account after the Federal Agents had seized the materials in the warehouse, I cannot say, because I do not know when they were seized. I got all the information for Mr. Barrett that he requested. I do not know when that was or for whom. Some of them were obtained when the two agents were in Mr. Barrett's office. Later, other records were looked up. At the time these two gentlemen were in Mr. Barrett's office and he asked for information and all papers on the Rug Life, those records were found and given to him. Later they came in, and the question arose about J. Rosen, and Mr. Barrett asked for the records on J. Rosen, which were given him.

Our records do not show that the company had taken over the J. Rosen account. In our ledger, so far as payment is concerned, it showed the Rug Life had taken over the account, but our files did not show it. The records I refer to do not show Mr. Barrett that the Rug Life account included the J. Rosen account. The latter account was kept under the name of J. Rosen and paid that way. Our files did not disclose that the Rug Life account included payments on the J. Rosen account. We have one ledger sheet under the name J. Rosen and one or two under the name of Rug Life. Our Rug Life does not show that they were making payments on the J. Rosen account. The payments I referred to that were made by the Rug Life on the J. Rosen account were payments Mr. Dan Carroll received from them. The payments came over from our Lake Park Warehouse, and were paid under the name of J. Rosen and applied on that account. I did not make any entry to transfer the J. Rosen account to the Rug Life.

At the time Mr. Barrett asked me about the Rug Life account, I did not recall that Mr. Dan Carroll was making payments on the Rosen account. Mr. Barrett asked for papers on Rug Life, and I gave them to him. I did not

then tell Mr. Barrett that Dan Carroll was making pay-
[fol. 588] ments on the J. Rosen account. Mr. Barrett asked
for all the information on the Rug Life account. I did not
know who the gentlemen were in the office nor why they
asked. I got the information on the Rug Life, and gave him
the papers. Later Mr. Barrett asked for information on
the J. Rosen account and he got those papers.

Q. Now, continuing the reading of the transcript, Mrs.
McShane: "Q. I called Mr. Barrett, the general manager,
to ascertain how much should be charged for the room—"
referring to room 549—"for the Rosen Account. A. That's
so, yes, sir." Would you say that that might have hap-
pened?

A. I don't know. I wouldn't know a thing about it.

I do not know about this happening. It does not come
within my regular duties to handle matters of this kind.
I had nothing to do with the conversation Mr. Stevens
testified he had with Mr. Barrett on April 24, 1936 about
the Rug Life. Anything said between them was outside
of my regular duties. I would not say that that kind of
a matter Mr. Barrett handles directly as a regular thing,
though it could happen.

Not all of the Lake Park Warehouse is dead storage.
There are a number of accounts rented by merchants. Most
of the accounts are for dead storage.

From the entry on Exhibit 220A, in which it appears
that the party was going to move canned goods in and out
on that account, I would not have any way of knowing
what was going to be handled in and out. This exhibit
does not show anything about moving cans in there. It
says, "Using for boxes of germicide."

I do not remember any question arising when they quit
using room 549 about closing the account out. Two of the
girls in our office helped me search for these records for
Mr. Barrett. I do not recall whether Mr. Pat Carroll ever
looked for any of the records about the trucking. I do
not recall that Mr. Stevens came over to look for any of
the records regarding the Rug Life account or the J.
Rosen account. I do not know whether Mr. Dan Carroll
came over to look for the records on these accounts. No
one, except Mr. Barrett, asked me to look up the records
[fol. 589] on these accounts. Mr. Barrett asked me for in-
formation on these accounts twice.

I do not know the circumstances wherein Mr. Dan Carroll made payments after the Rug Life account on the balance of the Rosen account. I knew about the Rug Life account, because that is the name given in the records. From the scrip received from our branch warehouses, it was entered under the name Rug Life. There is no individual on our records, to whom we looked for payment of that account. It is not unusual to enter the name of an account without obtaining the name of an individual to whom we might look for payment. We looked to the man in the warehouse to keep in touch with the person who owed the balance of the account. That would be Mr. Stevens or Mr. Dan Carroll. This is true of the Rosen account.

I do not know that all of the delivery tickets for cartage are included in Exhibit 221. I looked them up for Mr. Barrett, but I do not know what is in that bundle. I do not know how many I found at the time I looked them up. Mr. Barrett had me search through the records for the different dates, and take them out from the files under the date order. As I recall it, Mr. Barrett gave me the dates we were supposed to have a Rug Life account. We went through all of the records for these years for everything that pertained to this account. Mr. Barrett did not give me a list of dates. He gave me, for example, 1936 to date. I, therefore, looked through 1936, 1937, and 1938. These records come in our regular daily cartage. We were to look through our cartage department and those daily records. By "those records" I mean moving tickets. I was looking for everything that might be under the name of Rug Life to give Mr. Barrett, including delivery tickets and warehouse scrips. We also have ledger sheets which show payments. These show date of payment, but not by whom paid. To learn from whom the money came, which was applied on these accounts, we would refer back from our accounts receivable. If it came from our main office, we have a ticket on it. The same is true if it came from the branch office.

[fol. 590] I did find some of the van removal orders in our moving files under date, when I was asked to look them up by Mr. Barrett. I do not know how many I found. The record given to me a little time ago showed the dates covered by the tickets we found. I do not recall if we found them all at one time or not. I know we looked for them two or

three days. They were all given to Mr. Barrett at one time. The auto van removal orders we found covered the period 1939, if there was cartage done at that time. The one you show me covers the period 1938 and 1937. I found all of these in the files and turned them over to Mr. Barrett. I do not know how many, nor do I know the dates. I do not remember the dates of individual haulings. I made no record, except to turn all of them to Mr. Barrett. I do not recall whether the van removal orders that I found under the name of Rug Life showed the pick ups from the Empire Warehouse by the National Box Company, because I do not recall how those tickets read.

So far as I know, Mr. Barrett had nothing to do with these before I gave them to him. I do not know if he had those records at any time or not. He does have general supervision of the entire warehouse staff. Mr. Barrett might have asked some one to get those records for him, other than the time I gave them to him, but they were in the files under the date order, and they would not have been, had they previously been given Mr. Barrett. They would not have been given him and then refiled without my knowing about it. I am speaking about the general practice. I could not positively say Mr. Barrett did not have these at some time.

I went with Mr. Thulin's man in getting the tickets appearing as Defendants' Exhibits 14 and 14A. I do know that the entries on these sheets came from the entries on that account. The entries on Exhibit 14 show cartage as well as storage, also handling. The auto van removal orders record handling, which applies to handling in the warehouse aside from the cartage.

The records shown in Exhibit 221 is for cartage. The charge made for cartage shown on Exhibit 221 would [fol. 591] appear on our records from which Exhibit 14 was taken. It was not all under the same account. Our storage account is separate from cartage. I do know that all of the items on Exhibit 14 relate to the Rug Life business, because I checked that. All of the items on Exhibit 221, headed "Rug Life," relate to the Rug Life business. The item on the auto van removal ticket dated September 24, 1938 was entered under our daily cartage. The item of six dollars would be shown as having been received for cartage on that date. It would not appear on the Rug Life

account. The cartage items are named according to the customers for whom the service is performed on a large sheet. They are all named. On Exhibit 14, each time it shows cartage, it refers to cartage for the Rug Life. The entry on Exhibit 14 for September 24th shows five dollars on that date and on this record reads six dollars. This evidently has been copied incorrectly. So far as I know, it is not the same entry. These items have been checked against the tickets. If there has been a little difference in date, there may be a difference in the large sheets showing our daily records and this ticket.

I would say that Exhibit 14 is an accurate record of the cartage for the Rug Life, so far as our records are concerned. I would not say definitely there is a different date. It does not show the right amount for September 14, 1938. It is short one dollar cartage. I have a record for October 21, 1938 in the amount of five dollars. The entry on our auto van removal orders shows six dollars. As to whether the record is incorrect, I only say I checked on the copy which this was made from. This is typed. I cannot tell from here. It is not correct, as shown on this paper. I have a record of a five dollar amount for November 12, 1938. On here the record shows six dollars. That as shown on Exhibit 14 is not correct. I have one for November 17, 1938 in the amount of seven dollars. The record here shows six dollars. That is not the same item. I have one for November 19, 1938 in the amount of five dollars and fifty cents. The amount shown here is six dollars. I have one for November 22, 1938 in the amount of seven dollars. The amount shown here is six dollars. I have one for [fol. 592] November 28, 1938 in the amount of six dollars and fifty cents. The amount shown on Exhibit 221 is five dollars. I have two for November 28th, one for five dollars and one for six dollars and fifty cents. These are both correct.

It does not show what cartage was done on that day, only the amount. From this record, I do not know where the trucks picked up the cartage. I have one for May 10, 1939, May 2nd, but not for May 8th. The hauling on May 8th was for Rug Life. It does not appear on Exhibit 14 at all. I do not have one for January 5, 1937. I have one for January 11, 1938. The latter is in the amount of five dollars and fifty cents. The amount of the delivery ticket is five dollars. The one for January 11th for five dollars,

which was a pick up from the National Box Company, does not appear here.

The only answer I can give as to why this truckage for Rug Life does not appear on those records is that they were checked against the large delivery sheet. I would have to have that to be able to answer your question for those different dates in order to tell why the differences are in that ticket and not this. This transcript does cover all the records of cartage for Rug Life taken from our records in support. As to what the difference is between that and the original, I cannot answer without having our recap. The fact that the one dated January 11, 1938 in the amount of five dollars states that it is a pick up from the National Box Company would not have anything to do with it because it says Rug Life. It is checked and should be in there.

The entries on Exhibit 14 were checked from the delivery tickets plus the large sheet. Whoever made up that record may have had the delivery tickets for which the entries do not show on there, because that may be part of the charge on the large sheet, which would show a handling charge. The large sheet would show what part of the handling charge was done for Rug Life. I did include some of the charges on the large sheet in this transcript of Rug Life. As to how it happens that those from the National Box were not included, is because there is another date down here. "Have you a ticket for January 14th?" [fol. 593] Some of the tickets may have different dates. Some of the dates are made up for goods to go on a certain date. They are then held over two or three days. We do not change the date on the ticket. In checking it, it may be missed. We took the dates as shown on our large sheets as those were taken out. If the large sheets were made up from the delivery tickets, the dates would not necessarily be the same. Sometimes we have a delivery where one date appears on it and goods are not delivered for two or three days. The ticket may not be changed, but the record will show the exact date.

I write letters in an effort to collect back accounts. No letter was written on the J. Rosen account, because we have no address. I did not take this up with Mr. Barrett. There is no particular length of time our accounts are kept open which are unpaid. I use my own discretion. In the Rosen account, I carried it and the payments came in. I

had no reason to believe that the payments would not come in, because it was paid at our branch office. I do not know how many open accounts we carry in our Empire Warehouse, because we carry all of them alphabetically.

Redirect examination.

By Mr. Cavanagh:

Mr. W. F. Carroll has his office on Cottage Grove avenue, also. He is president of the company. He is in his office every day.

Part of my duties make me responsible for the collection of the various accounts in the warehouses. The branch warehouse manager also has something to do with collecting these accounts. To my knowledge, Mr. Barrett does not have anything to do with collection of accounts.

The first time Mr. Barrett asked me for the Rug Life account was when the two gentlemen were in his office. I cannot fix the month or year. In an off-hand way, I later learned the identity of these men. This was about a week or two after they were there. I understood they were gentlemen from the government checking on the Rug Life account. When Mr. Barrett asked me to pull these [fol. 594] files, I had the help of one of our girls in the office. I took them to Mr. Barrett, though I was not present when he showed them to the government men. To my knowledge, there was no inventory taken of the documents those files contained. The files contained various memoranda, tickets and ledger sheets. Mr. Barrett did not get a receipt from the government men for those records that he turned over.

Referring to Defendants' Exhibits 14 and 14A, it would make a difference on our bookkeeping entries on cartage if it was a charge account or a cash item. If a charge, it would be on the ledger sheet; if a cash item through our cartage records, it would come through daily. In looking at the records, I would say that in most instances the items mentioned on Defendants' Exhibits 14 and 14A were paid to our Empire Warehouse. That is the Lake Park Branch, but I do not know whether they were paid directly to the driver or not.

It is not unusual for us to have accounts there without addresses. We have that situation in all of our warehouses, though it is a small percentage of the accounts.

I do not know that that is a common practice among warehouse people in Chicago. I am unable to reconcile the discrepancies in Defendants' Exhibits 14 and 14A, in connection with the van removal orders without the large cartage record that comes from the department in support of those tickets.

Defendants' Exhibits 12, 13, 14, and 14A are true and correct copies of records as disclosed by our files.

Recross-examination:

By Mr. Hopping:

I cannot reconcile the records, because this record was taken not only from the records that are here, but from the large sheet. This is the exact record of what came into our office. I do not have the large sheet here. I did look at the large sheet and checked it, though I have not looked at it since. That large sheet was not checked at the time Mr. Barrett first asked for the information about the Rug Life.

[fol. 595] I was regularly on duty in the warehouse in December of last year. I do not recall the date Mr. Barrett asked for the records pertaining to Rug Life. I recall Mr. Barrett did come to Detroit, but I do not recall if it was last December. That is the approximate time. The time he came to Detroit he asked for some records which I believe pertained to the cartage tickets. I told him that I had given them to him before. He then recalled having given them to the gentlemen that were in his office. Those are all the records I recall at the present time that Mr. Barrett asked for before he came here. I recall Mr. Barrett asking for records on the Rug Life account one time when the two gentlemen were in the office.

At a later date Mr. Barrett asked for some moving tickets on the Rug Life account covering the period of time of the case. I recall he mentioned years. I told him that they had been given him some time ago. Then he recalled having given them to the gentlemen who were in his office.

To the best of my recollection, Mr. Barrett asked me for records on two occasions. I presume any request Mr. Barrett made for records would come to me. That would be the regular procedure.

Redirect examination.

By Mr. Cavanagh:

I do not know who sets the prices that appear on Government's Exhibit 122. They are set by different people. As I recall it, Defendants' Exhibits 14 and 14A would represent moneys received. The amounts indicated on Government's Exhibit 221 could be different than those appearing on Defendants' Exhibits 14 and 14A. The latter represents the actual money received.

Recross-examination.

By Mr. Hopping:

It has been testified by Mr. Pat Carroll that the amounts shown on Exhibit 221 is the amount of money picked up by the drivers, turned over to him, and turned into the [fol. 596] office. That money comes to me. A girl under my supervision checks the receipts for Mr. Pat Carroll against the daily delivery ticket. If the girl discovered that the cash turned in by Mr. Pat Carroll's department did not correspond with the auto van removal orders, she would come to me about it. This happens frequently. I usually take it up with our moving department and correct it. I can't answer definitely without the other record. Though I cannot explain the difference when it appears that the records of Pat Carroll's department show they turned in seven dollars and our records show that they turned in six dollars, but if the total amount over a four-week period is the same, it would be accepted. I cannot reconcile the difference in the figures now.

(Defendants' Exhibits 12, 13, 14, and 14A were thereupon accepted in evidence.)

Redirect examination.

By Mr. Cavanagh:

In order to verify the items mentioned on defendants' Exhibits 14 and 14A, it would be necessary to have a large record for each date. This would require two or three days with the help of these tickets which I would have to have to get the account files.

I have not had those tickets in my possession since they were given to Mr. Barrett. That was the time the gentlemen first came to his office about this case. Those tickets are necessary to aid in the production of those records, because they have a date on them and a line number on the sheet. For example, the one bearing date January 14, 1938, there appears in the left-hand corner No. 11. That number 11 is on the daily sheet. We would require all of the tickets in connection with the cartage to get the record that shows the difference between the amount there and what we actually received on our records.

[fol. 597] BARRETT, JAMES J., having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Direct examination.

By Mr. Cavanagh (Continued):

I am the same James J. Barrett who was testifying at the adjournment of court yesterday. I am forty-three years old. I have never been arrested. I have never been convicted of any crime.

The first information I had about the Rug Life account being in the Empire Warehouse was the latter part of May, 1940. This occurred while I was in my office and two government men came in. They identified themselves and wanted to know if we had an account under the name Rug Life, Incorporated. I called my secretary and told her to go back and check the file. Prior to that I don't believe I knew whether there was such an account in our warehouse, nor did anyone in our organization have occasion to discuss the Rug Life account with me. I do not recall any conversation with Fred Stevens in the year 1936, though I may have had one with him. If I did, there was nothing unusual about it.

I believe it was the latter part of May that these men came in. One of them was Mr. King, though I do not know who the other was. I sent the girl for the file. After she brought it in, I told these gentlemen that we did have such a file and presented it to them. I had not seen that file

prior to that particular occasion. After I told them there was such a file, they told me that this account was operating illegally and they wished to get some information. That they were anxious to learn from our files who the men were behind this account. They also said they were handling the investigation in an effort to locate the still, that is after they had told me that it was illicit alcohol the men were handling.

I do not believe I looked in the file after the girl brought it in. I laid it on my desk before Mr. King. He came [fol. 598.] over to look at it. The file contained a scrip and rate sheet. It might have contained a few of the van removal tickets. That file did not contain a lease. Mr. King asked permission to take the papers from this file, and I consented to let him do so. I did not make any inventory of the contents of this file, nor did I receive a receipt for it. It was either that date or shortly thereafter that they wanted to get into the room. In response to their request, I told them as I have had occasion to do in matters of this type before, that I wished they would present me with a court order. Mr. King said he did not want to give me a court order. By court order, I had in mind, either a search warrant, or some process whereby I would be compelled to grant access or confiscation of other people's property. When Mr. King said he did not want to do this, I explained the position of the company. Mr. King held his position and I felt I was doing my duty in holding to mine. Mr. King then told me he would raid the place. I told him I thought that was the better choice of the two things to do. If he could not get me the court order, that his actions would at least leave the company and me legally out.

Exhibit 216 was in the first file I am sure, because it was the active account at that time. By active account, I mean current account. Mr. King and I discussed the question of his raiding the place and finally he told me that all he was interested in was tracing the men who were doing business in the warehouse and requested my cooperation. He told me that he wished to put a watch on the outside of the building and asked that we operate normally inside. I told him we would be glad to operate along those lines. I then phoned the Lake Park Warehouse and told them to do as Mr. King had requested. Mr. King and another investigator were present when I made

this phone call. I knew that the warehouse was under observation for several weeks.

I do not believe I had any conversation with any other representative of the Federal Government during this time. I would say about June 16 that I had my next conversation with the Government officer. At that time, Mr. King came to my office and told me that there was no activity going on in the building. He felt that some word had gotten out [fol. 599] from our organization that the Government had the building under observation. I told him that I do not believe I could have been betrayed to that extent by the people in the Lake Park Warehouse. He told me there had been no activity, and he thought the people had gone. I then talked to Mr. Stevens on the telephone, in Mr. King's presence. I asked him if there had been any activity lately in connection with the account. To my surprise, Mr. Stevens said there had been, and in answer to my question said that the last activity had been on the previous Saturday. That was possibly June 13th or June 12th. I disputed Stevens word and he insisted that the people had been there on Saturday afternoon, a few days prior to the conversation I had with him. I kept Mr. Stevens on the phone until I told Mr. King what he had told me. After a moment's silence, the other gentleman with Mr. King said, "Don't you close on Saturday afternoon?" I told him we did not and then hung up. I told Mr. King and the other gentleman that we were open every Saturday afternoon until five o'clock. They said they did not know that, and that they had left their post at noon time on this particular Saturday.

Mr. King and his companion left, but before going asked us to continue the way we had. I assured him I would. I had such frequent visits thereafter; I could not keep track of the dates. I believe it was a few days or a week later that Mr. King came in and I think explained that they had arrested some men in connection with this case. He told me that we should have another file in this account, and that there was more information than I had given him. I then called my secretary and told her to see if there was any other file under Rug Life. She said there was not. I told her to go to the transfer file or closed files and see what she could find, and if she found any file to bring it to me. She did bring another file to me. Mr. King was

there at this time and I believe Mr. Herdrich. I turned this file over to them, as I did the first one.

I believe Exhibit 218 are the papers that were in that file. There was also a lease in that file. Government's Exhibit 100 is the lease. The first time I ever saw that was when the file was opened in my office, when Mr. King [fol. 600] was present. I did not know that it was in the file when I asked for it. I do not believe there was anything else in the file. Since I have been in the court room I learned that we did no cartage in connection with that account, so I do not believe there were any van tickets in the file. Before seeing the files on this occasion, I did not inspect the contents of them.

During this period, I proceeded to take the matter up with Mr. Carroll, President, and told him what the gentlemen wanted us to do. I believe we also talked to Mr. Thulin, our company attorney. I was told by these gentlemen to go along and cooperate; that I had been doing all right up to that point.

As I recall it, Mr. King gave us a reason for not wanting to give us a court order or search warrant, the fact that this was a closed investigation, which, of course, didn't mean anything to me. I had never before heard of the term. Later he came back and said it is now an open investigation. Arrests had been made. He told me that since I received the lease, I knew who the men were; and I believe that Mr. Stevens and Mr. Carroll had made identifications.

I believe it was then that they wanted to go to the room. As I recollect, I was told that regardless of our previous custom, I should let them go and look in the room. I think both Mr. Carroll and Mr. Thulin told me to do that. I then called either Mr. Stevens or Mr. Carroll and told them that the Government men had been given permission to go into the room, and that they should not molest anything there. That when the Government agents came to the warehouse, they should let them in. I believe they did go over, and found the exhibits presented by the Government in the room. I believe it was on my instructions that they got them, because I ordered them left in that room. I never saw those exhibits before they were presented in this court room, because I never went to the warehouse with the Government men, nor had I been in the room before.

I do not visit the Lake Park Warehouse five or six times in a year. This takes us up to about July. I believe Mr. [fol. 601] King and Mr. Herdrich came back, claiming that I still had not furnished them with all the information they thought I could give them. I had a further search made for Rug Life account. I asked if they could give me any other name by which I could locate the file, and they were unable to do so. I then ordered Mr. Stevens, after assuring Mr. King I would search back as far as I could go for room occupancy. He found a file. I then called Mr. King and advised him that we had found a file not under the name of Rug Life, but under the name of J. Rosen. At that time, I knew of no connection between J. Rosen and Rug Life.

Government's Exhibits 220 and 220A are the papers that were in that file. I think there was also a blue rate sheet there when I turned it over. I believe it was a month before this that I turned over the inactive Rug Life account file. At the time I turned that file, that is Government's Exhibits 218 and 218A, over, I did not know what the file contained, nor did I take an inventory of it, nor did I receive a receipt for it. Mr. King came right out to the office after I called him and told him that I had found the J. Rosen file. I received it from Mr. Stevens. The file I am referring to, like all of our files, is a folder, letter head size. It contains the papers that we have in connection with the account. On the top of it, it has the name and lot number. There is only one file kept on each account. The files are made up in the main office from information obtained from these papers. Those papers are made up at the various warehouses. The warehouses keep a duplicate copy of each paper. I think Mr. King came out and picked up the Rosen file right after my telephone call. I gave him everything that was in it. It seems to me that there was also a rate sheet in that file but it does not appear here. I did not inventory the Rosen file, nor take a receipt for it, or its contents. I believe Mr. King indicated that these files would be returned to me.

I did turn some van removal orders over to him when he questioned me on the deliveries we had been making to the Roadway Transit. Mr. King opened his file and had some dates on which deliveries by our equipment had been made to the Roadway Transit dock. He requested [fol. 602] me to certify these from our records. We pro-

ceeded to do this. These auto van removal order notices, that is Government's Exhibit 221, are kept in the rear of our office. They are kept according to month and year. I believe it was about the middle of June, 1939, that I turned these moving tickets over to Mr. King.

Mr. King and I went over all the deliveries, and I had two girls in the office go back and forth and procure tickets to give them to Mr. King. He asked then if he could take them along. I did not take an inventory of those particular auto van removal orders, nor did I take a receipt for them. I do not know how many I gave him.

In about August, Mr. King and Mr. Herdrich came back again and insisted that though I had turned the Rosen file over to them, I still had another account. I have not to date been able to find one. They gave me no help whatsoever as to what the account might have been. I had a history of the occupants of the warehouse made showing every lot we received, where it was placed in the warehouse, and the name.

Defendants' Exhibit 15 is our record from July 2, 1935 up to and including April 24, 1936, which are dates on which the J. Rosen account was on our books. Mr. King, Mr. Herdrich, and Mr. Stevens spent several hours going over these same lot numbers and the names in Mr. Stevens' office. We have not been able to locate any other account in connection with the Rug Life business. They told me that it was in January, 1936, or the early winter, of 1935, that we had another account. With all of our searching, we have been unable to find one. I spent hours and hours on this.

There were frequent visits by Mr. King, Mr. Herdrich, and other Government officers between my office and Mr. Stevens' office. They did not discuss this matter with Mr. W. F. Carroll, until a much later date. I believe it was about September. Mr. Hinton and another gentleman visited the office. They asked at the information desk, which is just outside my office, to see Mr. Carroll, the president. The young lady told them that he was not in at the time, but that I was, and asked if they wished to see me. They said they did not.

[fol. 603] Government's Exhibit 223 is a statement Mr. King made up and which I signed. It is dated August 1, 1939. To include all the conversations I had with Mr. King would require it to be twenty pages long. This statement

does not include them all. The paragraph, which says, "The first knowledge I had of Rug Life, Incorporated being in our warehouse at 5041 Lake Park avenue, Chicago, was upon the signing of the lease for room 549 on January 5, 1938," is not exactly the way it was said. I was not present when this lease was signed. The first knowledge I had of that lease was when I saw it in the file I showed Mr. King. That was in the middle of June, 1939. When I stated in that statement about the terms of the lease, and that the account was continued in April, 1938, on the basis of Five Dollars service charge, I was there stating what I had learned during the course of this investigation. I had no knowledge of the existence of the lease at Lake Park avenue prior to the investigation. I familiarized myself with the accounts during the investigation. I did not know of the breaking of any lease before my conversation with Mr. King. My knowledge of the breaking of the lease in April, 1938, was from the files and information I gathered in talking with the various employees of the company.

I had so many conversations with representatives of the Alcohol Tax Unit, that I cannot recollect everything that we discussed. I think I covered the more important points.

I never talked with anybody from the Rug Life, Incorporated, nor did I at any time visit room 549, nor did I at any time know any of the occupants of room 549. I never entered into any agreements with any of the occupants of room 549 during this period. To the best of my recollection, I never talked over the phone or otherwise to anybody. I was never asked to identify anybody in connection with this case. I never saw anybody in connection with this case until I came here.

Cross-examination.

By Mr. Hopping:

I do not believe I was ever asked to identify anyone in connection with this case. When I came to Detroit last [fol. 604] December, I do not believe you asked me to identify the pictures of any persons. I do not so recollect.

I did appear before the Grand Jury and testified. I was asked if Exhibit 223 was my statement. You asked me some questions though I do not recall just what they were. I will tell you what I remember your telling me when we get to it.

If I was asked on December 5, 1938 if I knew anything about the Rug Life lease, I would certainly have told the same thing I have said here today. I do not recall a discussion in December, 1938, about the lease to Rug Life.

I saw Mr. King in Detroit in December, 1939. I may have seen that copy of my statement, though I do not recollect it. I came to Detroit under subpoena to testify as a Government witness. I might have noted my signature on the statement before I was asked to testify. I probably forgot what it contained from the time I signed it in August until I appeared before the Grand Jury in December. At the time I was asked to testify in December, I probably recognized my signature without reading it at the time. I never thought I would be in this. The statement was signed and submitted in the interest of cooperation.

I might have hurriedly gone over it and signed it. As to signing affidavits without knowing what was in them, I still say that I signed everything and did everything in the interest of cooperation. I will have to say that I knew what was contained in the affidavit at the time I signed it. The statement does say I knew about the Rug Life lease on January 5, 1938, but I want to correct it. This is the first time I have asked to correct it. I do now say that the first I knew of the Rug Life lease was May, 1939, at which time I learned about it from Mr. King and another agent. I do not know how they happened to come to me at that time.

I am the general manager there. The information desk and my office are very close together. I receive anybody who comes to talk about business. I did not tell them to see Mr. W. F. Carroll that day. The first occasion Mr. King and the other agent came to see me, they told me that there was an illicit alcohol business being conducted on our premises. I was surprised and astonished. They said [fol. 605] that they wished to get into the premises. I told them they could if they served me in the proper manner with either a search warrant or a court order. I mean a search warrant for the room in which the account was being maintained. They did not tell me what room they wanted to search, but I presumed they wanted to get in to the goods.

I knew what unit of the warehouse they were looking for, because I had obtained the file for them, after they

had asked if I had such an account. I showed them from the file where the Rug Life business was located. I believe they wanted to know from me which unit this account was in. They also told me that the Empire trucks were delivering the alcohol to the Roadway Transit dock, and that they followed some of the shipments to Cleveland, Ohio. I do not believe they elaborated in their explanation so as to tell me that they had arrested drivers down there, or who participated in this account.

They may have told me that it was illicit alcohol, but I told them that I was in a fiduciary business and until the people had been tried and found guilty, that I would be liable, and the company would be liable for a civil action in permitting anyone to get into their goods and confiscate them, and please cooperate with me by giving me a search warrant. I told them that because of our line of business, I was entitled to protection. I tried to persuade them to that extent. We had a friendly discussion at the time, and Mr. King was trying to get me to see his position and I was trying to get him to see mine. I was going to protect the occupants of room 549 not until they were proven guilty, but because of the company. That was my position, though Mr. King did tell me that they were illicit alcohol bootleggers. I did not feel I should just take his word for it.

I told Mr. King I wanted to believe him when he said they were illicit alcohol bootleggers that were operating out of that room, and that I did not wish to dispute his word. However, I stated that that was his business and I wished he could see my position. It was after he had told me that they were illicit alcohol bootleggers, that I told him I thought he should have a search warrant to go [fol. 606] into the room. Mr. King said he wouldn't get me a search warrant. I had no reason to believe that he would.

He said that he would raid the place. That seemed to me a good way out as far as I was concerned. I was glad to have him say that.

Upon the first meeting, when they asked my cooperation in helping them locate the people using the room, I did not know whether all they wanted to do was to go into the Lake Park Unit to see who was using the room. I assumed they wanted to go into the room. He told me that they were trying to find the people who were handling the stuff and also he was not interested with anybody in the

Empire, but that they were trying to locate the still. Though all he wanted to do was to have a couple of their men to go into the Lake Park unit so they could watch and see who the people who were running the Lake Park business were, I felt that he was making a policeman out of me. I thought then, and still do, that by the nature of the business it would be very easy for Mr. King to cooperate with me. I was trying to cooperate with him.

I heard Mr. Stevens testify here with respect to what he did in connection with the opening of the Rosen account.

Q. I am going to read this question and answer to you from Mr. Stevens' testimony: "Sometime during 1936 I received a call from the main office regarding two men who were coming to the Lake Park Warehouse to negotiate for the rental of space." Answer: That was the Rosen account which was started at that time. Question: "A short time later Mr. Dan Carroll, manager of the warehouse called me, stating the man had arrived." Answer: That's right. Question: "I took the two men through the warehouse, and showed them the rooms we had for rent." Answer: That's right. Question: "They chose room number 549 as the room they would like to rent." Answer: That's right. Question: "Our regular price on a room of this type is \$17.50 per month, plus half that amount when the goods are brought in, plus half that amount again when the goods are removed from the warehouse." Answer: Yes, sir. Question: "Does that apply to the original renting of this room to J. Rosen?" Answer: True, because we hadn't found that file. Question: "These [fol. 607] charges are for the handling, storing, and removing of the goods. As these men had explained to me that they would be bringing in materials and shipping out merchandise two or three times each week . . ." Answer: That's right. Question: ". . . I called Mr. Barrett, the general manager, to ascertain how much should be charged for the room." Answer: That's so, yes, sir." You are the Mr. Barrett, of course, that is referred to in there, aren't you?

A. Yes, sir.

The Rosen account referred to is the J. Rosen account set forth in Exhibits 220 and 220A. I do not know if the two men referred to are the men who were using room 549 under the name Rug Life and J. Rosen. I do not recall Mr. Stevens calling me to find out the amount of rent to

be charged the people who were opening the account under the name of J. Rosen. As to whether the statement is true or not, I only can say I do not recollect such a conversation. Mr. Stevens might be mistaken in his recollection. I will have to deny ever talking to Fred Stevens about the rent to be charged for the room under the Rosen account. I do not remember such a conversation with Mr. Fred Stevens. I do say that I did not have such a conversation. I think I had better stand on my answer and say I do not remember such a conversation.

I have talked with Mr. Stevens about this from the time the agents came there in May, 1939. I have not talked with him about his statement in which he said that he talked with me when the account was opened. My conversation with Mr. Stevens since this investigation started has been negligible. I have not talked to Mr. Stevens to try and recall what he says happened in 1936. I believe he tried to tell the truth to the best of his ability. I am doing the same.

Though Mr. Stevens did say in response to a question here that referring to the J. Rosen account the men explained they were going to box and ship rug cleaning fluid, and that he explained the whole set up to me, I say that such a conversation did not take place.

Q. "Question: Then, did you talk to Mr. Barrett in April, 1936? Answer: That was under the Rosen account. [fol. 608] Question: Can you tell when the Rosen account was opened? Answer: I can't tell the exact date. Question: Can you tell by looking at these records of the company? Answer: April 24, 1936. Question: Would that be the time you talked to Mr. Barrett about this Rug Life business? Answer: Yes, sir." I will ask you, do you have any recollection of such a conversation with Mr. Stevens?

A. No, sir, I do not.

Q. Continuing on with Mr. Stevens testimony, on page 1855 of record. "Question: You did take up this Rug Life business with Mr. Barrett, in the first instance? Answer: I think I recall that I did. Question: And did you talk with him about the method they were going to do business by? Answer: I explained the situation to him, I explained that these men were going to bring in some cartons, good, and that they had rented one of our rooms up there, and that they were going to box these

cartons, and later reship them. He says, "All right, that is okay." Do you have any recollection of such a conversation with Mr. Stevens?

A. I do not, Mr. Hopping, but he could have had it, but with no consent from me, had he told me it was an illegal operation.

Q. The next question is, "Question: Did you tell him what kind of fluid they called it? Answer: I told him it was rug cleaning fluid." Did you learn from Mr. Stevens that they were handling rug cleaning fluid?

A. I can't say that I did, Mr. Hopping.

I made a thorough search for all the records pertaining to the Rug Life account, when Mr. King first asked for them. I asked for Rug Life, Incorporated, because I assumed we had only one account. I asked for one account. In response to this, they naturally would go to the active or current accounts. That was in May, 1939. I did not ask the girl to get the current Rug Life account, I told her to get me a file of the Rug Life, Incorporated, if we had one. Whether it was current or whether it was inactive I did not know at the time. She did produce Government's Exhibits 216 and 216A, which was the active account.

[fol. 609] I did not know why there was a new account made under date January 5, 1938. At that time, I did not know there had been a previous account. I only learned that there had been one after locating the file from my secretary. I did not know then why there should be two Rug Life accounts on the same people. This account was closed out after running for a period of time. I mean Exhibit 218, which was opened on November 18, 1936. I do not know the expiration date, though as I recollect it now, it ran about four or five months. These are the original papers made at the opening of the account, and do not show the expiration date. As to whether the Rug Life account dated November 18, 1936 expired, it appears that some action was taken on it, because the lot number changed. I do not know why. I have heard why since I have been here. That is the only way I learned why there were two accounts in the name Rug Life.

After finding the second account, I still did not know about the lease, which is Exhibit 100. I learned of this, as I previously explained, when I turned it over to Mr. King. This lease covers the business beginning January 5, 1938. As to whether I noticed the lease was missing when

I turned the Rug Life account over to Mr. King, I may have made a mistake, and if so, I want to correct it now. This lease was in one of the two files. I thought it was in number 15896, but it could have been in 16129 file. I am not positive now just which time that lease turned up. It is a year ago now. It might have been in either file. I never knew of its existence until the file was opened on my desk in Mr. King's presence.

Mrs. McShane testified that all of the entries under the tenancy of Rug Life shown on Exhibit 216, which is a rental on January 5, 1938, and the items shown on Exhibit 218, beginning November 18, 1936, were carried under two accounts. The two accounts were not carried concurrently, though they were carried on our books under the name Rug Life subsequent to one another. They were shown on our books as Rug Life accounts. There are records to show that they are there today.

[fol. 610] When Mr. King came to my office, I sent for a file on Rug Life. The file that was brought in showed but one Rug Life account, which began January 5, 1938. At that time there was on our books an account showing that Rug Life opened November 18, 1936. I did not give that file to Mr. King at that time. Mr. King came back later, and said he had information that the Rug Life business had operated before January, 1938. He asked if we had a record showing that, and I ordered a search for it. It was produced and turned over to him. As to why I did not turn it over to him upon the occasion of his first visit was because I had no knowledge of its existence at that time.

When Mr. King returned the third time, he did not say that the same room had been occupied prior to November 18, 1936. He said he had an idea that this business was going on in our warehouse at that time. He did not insist we had a record, but wanted to know if our files would reveal one. I do not know whether your notes are correct when you say that Mr. King insisted that there was still another file. Mr. King came back and asked me if there was any way I could tell if that room had been occupied prior to November 18, 1936. I said that I would certainly try to find out. I could tell by a search of the files.

I did produce the Rosen account, but it was not with their help, insofar as giving me a name was concerned. I did find it, and since I have been here, learned that the

payments on the Rosen account were taken over by the Rug Life account. I did not know that until I got here and went into the details of the thing. I might have learned about it during the investigation. When Mr. King came on the second or third occasion, he may have had photostats of the Roadway Transit receipts for shipments of Rug Life.

I do not remember whether he showed me photostats similar to Exhibit 176 or not. He did not use records similar to this to help me determine the period of time Rug Life had operated there. He did tell me that he thought I should have records of the Rug Life operating prior to November, 1936. He did not tell me why. He gave me no help. I asked him to give me information [fol. 611] which would enable me to find the files. He did not tell me that he had records of shipments of Rug Life prior to November, 1936, from the Roadway records. I do not think he showed me that Rug Life had shipped rug cleaning fluid at the Roadway in April, May, June and July of 1936. These were not part of the records we went over to find the earlier Rug Life records. Nothing Mr. King ever showed me enabled me to find the Rosen file. I was not shown Cushman Motor Freight shipments, showing that they handled Rug Life cleaning fluid in December, 1935. The first time I was shown these receipts was in the Grand Jury room. I was asked if I had a record of the use of room 549 even prior to April, 1936. Mr. King may have asked me about that after the Rosen file had been established. I did testify that Mr. King and Mr. Herdrich came back and said I should have records prior to the Rosen account. At that time, he did not show me records of the Cushman Company for shipping rug cleaning fluid prior to April, 1936. I remember distinctly asking him if he could give me any help.

I never heard the name "Golden Extract," until I came to the Grand Jury here. At the time of his visit, I was not interested in whether the account was at room 549, or where it was. If I could have found the file on it, I would have given it to him.

I believe we did search for the occupancy records of room 549 prior to April, 1936. We could not find an account. I do not know whether Mr. King asked me to do this, or whether I did it on my own initiative. It was developed in the course of events, and not on the second

or third occasion that Mr. King came there, that the Rug Life business started under the name of J. Rosen. I did not know J. Rosen. I have since found that name to be fictitious.

Mr. King did tell me that the room might have been used under any other name, and that he could not suggest a name. That was the reason he and Mr. Herdrich went back for five years on the books with Mr. Stevens. I do not recollect whether Mr. King asked me something before he went over there. I do not know what Mr. King meant [fol. 612] by the term "closed investigation." I do not know what Mr. King and I discussed that they were afraid somebody in the warehouse might tip off these bootleggers who were being investigated.

I did tell Mr. King that I did not think the Lake Park would betray me, after he told me that the activity had stopped. I still mean it. I told Mr. King I could depend upon the employees at the Lake Park. I think it was discussed before I called Mr. Stevens and before the agents went over there. I think I discussed it at the same time the agents went over. That is when I called up Lake Park and told them that the building was going to be placed under observation. I believe that was when they first came in. On that conversation, I talked to either Mr. Stevens or Mr. Carroll, I do not know which one.

I heard Mr. Stevens testify that he received a call that I was sending over the investigators, but that was later. When I first called Lake Park, I did not use the term "bootleggers." when I gave them instructions that Alcohol Tax Men were going to be around. I told them that Government Agents had asked our cooperation, and that we were to operate normally. I did not say specifically that they were not to allow any information to get to the tenants of room 549 that they were being investigated. I meant that, however, when I told them to operate normally. My remarks conveyed the information that they were not to tell the tenants in room 549 that the Alcohol Tax men were around.

I believe Government's Exhibit 219 was among the papers attached to one of the moving tickets which were turned over to King and Herdrich. That would have to be the first Rug Life file, I produced for Mr. King, because it is dated 1939. The exhibit shows that the Rug Life account had been receiving boxes from the National Box

Company in the name of the Fox Picture Frame Company of Gary, Indiana. It would have meant the same to anybody, when first found in the Rug Life file, who had had experience with the name Fox Picture Frame at the time the document was handed them. There is written on the front of it, "For Rug Life." That is Pat Carroll's writing. [fol. 613] I had no occasion to ever talk to Pat Carroll to see if there were any other records of Rug Life receiving boxes in the name of Fox Picture Frame Company of Gary, Indiana. My answer is, I did not have such a talk.

I testified on direct examination that I told Mr. Stevens or Mr. Carroll to leave the equipment right in room 549 until the agents came and I feel that I was correct when I said otherwise the Government would not have obtained them. When I say, "otherwise the Government would never have gotten it" I have to go back to what I term suspicion Mr. King had for me. I do not recall that he told me that the Empire Warehouse employees knew that the bootlegging was going on there. I would say that he did not. I do not think he ever asked me if I could trust the employees at Lake Park not to tip off the bootleggers, if they found out that I was talking to alcohol tax men. The question of tip-off never occurred until he came in and accused me, or accused someone in the organization of having done so. I must correct my statement in which I said that I knew about the Rug Life business as early as January 5, 1938. That is in my statement, but whether it was my definite statement to him, I do not recall. As to whether we had any cartage for the Don Nelson accounts, I would have to ask which of the accounts shown do you refer to? Since it is Exhibit 218, the one beginning November 18, 1936, I have learned from the testimony here that we did not haul on this account.

Government's Exhibit 221, a van removal order dated January 5, 1937, is during the period between November 18, 1936, and January 5, 1938. As to whether it was during the time of the Nelson account, I would have to know when the account was changed over. It looks like a delivery was made on this account, which was opened November 18, 1936. The delivery was in an Empire Warehouse truck. It looks like there was one delivery by our trucks for Rug Life during the Don Nelson account. You have all the tickets. I went back a long way to get them for you and I turned them over to Mr. King.

Mr. King asked if we did have some other records about Rug Life shipments showing transportation in January, 1937, and I gave him all the records I could find. I did [fol. 614] bring four of these with me to this trial. My attorney, Mr. Fischer, did hand them to you while Mr. Anderson was on the stand. If two of these four show pick up of boxes from the National Box Company for Rug Life, I do not know. I paid no attention to what those called for. I saw they were for the Rug Life account. I turned them over to my attorney, who later turned them over to you. It would be hard for me to say when I obtained those which I produced during the trial. I believe I gave them to Mr. Cavanagh, my attorney, three or four months ago. I do not think I obtained them from our files. I believe there was a standing order if any documents were found relating to these accounts that they should be procured and turned over to me. I do not recall when these four entries were so turned over. I do not know whether it was before I came to Detroit last December or not. I have no recollection about it. I forgot about them and I believe Mr. Cavanagh did too until he ran across them in his file the other day.

When I came in December, I was subpoenaed to produce the records relating to the Rug Life business. I sought you out as soon as I arrived and told you that all the records I had had been turned over to Mr. King, so far as I knew. For that reason I couldn't bring any more. At that time, I did not know that these four records existed. Off-hand, I cannot now tell you when I did discover their existence. They might have been misfiled at the time I turned the other records over to Mr. King. I cannot account for that.

Mrs. McShane was correct in testifying that there is a daily sheet made up of all truck deliveries by Mr. Pat Carroll. These are filed and kept as part of the records of the company. They may have been there when I received the subpoena in December, and I might have unconsciously overlooked that particular document, because it isn't an individual record with respect to these accounts, it is a collective record of all transactions handled on each particular day. It is a part of our records of hauling for this account, such as our bank deposit slips.

When I testified that unless I had told Mr. Stevens to keep these materials in room 549 the Government would not have gotten them, I meant that if any betraying would be done in our organization, I was the one that could have [fol. 615] done it. That has been true since I have been general manager; if I had an opportunity to betray these people or any other account under suspicion. I do not operate that way.

I do not know if it was Al Johnson who operated there from January 5, 1938 to June, 1939. I never met the man who operated during that time. The alcohol that was there in June, 1939, was shipped out after my talk to Mr. King at his request with his knowledge.

I have never been arrested. There were police officers in my home in Chicago, though I was not arrested. On July 6, 1939, two bandits entered my home and tied up my children. They never took any liquor from my home, because I never had a bottle there.

Redirect examination.

By Mr. Cavanagh:

I am a member of the Chicago Association of Commerce, Hyde Park Lyons Club, Woodlawn Businessmen's Association, Traffic Club of Chicago, and Englewood Businessmen's Association. I also belong to the National Furniture Warehousemen's Association, Illinois Furniture Warehousemen's Association, Movers Association of Chicago, and American Warehousemen's Association.

My statement was made up from collective discussions and remarks I probably had made over a period of time to the gentlemen. I was not there when they made the statement up. Mr. King brought it in and I signed it. I do not believe there was anyone else with him. I never appeared before a notary in connection with it. Mr. Herdrich might have been present at the time the instrument was signed.

The Rosen file was not located alphabetically. We had gone over that without any account being looked upon with suspicion by Mr. King or Mr. Herdrich. They were asked by Mr. Stevens to look over every account going back three or four years. I told Mr. Stevens to go back through the

records regardless of any room in the house, any account that might appear to have had this type of merchandise in it, I wanted to see the file.

[Vol. 616] We employ a lot system in our warehouses. Nothing was done with the lot numbers in connection with locating the Resen file. He looked through every account alphabetically and pulled the material within the file. Later we determined that room 549 was occupied by the Grodsky Corporation prior to April 26, 1936. I informed the Government Agents relative to the prior occupants of this room in February, I believe, when I brought the file over to show Mr. Hopping. Defendants' Exhibit 16 is the file. It discloses a rate sheet and scrip made out in the name of William A. Grodsky Corporation for occupation of room 549, dated May 1, 1934, for the purpose of fur storage. The rate sheet shows the rate. It says "\$10.00," with the further notation "The above price prevails providing they keep above room for one year." There is also an office correspondence memorandum in the file, dated May 23, 1935, to Dan Carroll to arrange for settlement on the best basis possible. This was signed by D. W. Sheehan, who worked in conjunction with Mrs. McShane on collections. This is a copy of the letter dated May 23, 1935, referred to in the memorandum. The letter states that a statement showing a balance of \$53.75 was enclosed due at the time they removed the goods from storage on November 15th. The letter further states that the \$10.00 per month rate was quoted only in the event the goods remained in storage for one year, and that if the goods were removed prior to that time, the regular rate of \$17.50 per month would apply. I showed this file to Mr. Hopping.

I am familiar with the prevailing rate for storage in the City of Chicago for the years 1936 and 1937. That rate was a cent and three-quarters per cubic foot for room storage and one cent and one-half per cubic foot for open storage. Where other services were required, there was a handling charge. The handling charge was arrived at at the time of quotation to the customer after we had an idea as to the extent of the service they might require.

I do not remember whether I had anything to do with fixing the rate in connection with either the Resen or Rug Life accounts or not.

The first time I ever saw Government's Exhibit 219 was when one of the girls brought in the moving tickets. I [fol. 617] turned them over to Mr. King. It was attached to one of the moving tickets. I believe there were one or two bills of lading. At no time did I receive an inventory or receipt for the instruments or documents I turned over to the Federal Agents.

I do not recall when I gave you the four cartage tickets, unless it was the early part of this year.

I first saw Government's Exhibit 221 when the girl brought them in my office. That was the time I turned them over to Mr. King. I had no occasion to see them before then. I have not seen them since, until this trial. The cartage tickets are filed in a yearly file with monthly folders. They are filed by date only.

I have, in the past, had occasion to request search warrants in connection with our business. This has happened two or three times a year. I had never been refused before my discussion with Mr. King.

(Defendants' Exhibit 16 was thereupon received in evidence.)

Re-cross examination.

By Mr. Hopping:

The other requests for search warrants were not in connection with the storage of alcohol in our warehouse. In other instances where I requested search warrants, it was not based on information that alcohol was stored in our warehouse, but other merchandise than household goods. I am somewhat familiar with the special regulations regarding the handling of alcohol.

Redirect examination.

By Mr. Cavanagh:

I never knew there was ever any alcohol in the warehouse. I don't know to this day that it was alcohol. Mr. King first told me there was alcohol in the warehouse.

(The defendants rest.)

[fol. 618] HINTON, Louis W., having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Direct examination:

By Mr. Hopping:

I was in the United States Attorney's office on the morning of May 14, 1940 at the same time Mr. Fred C. Stevens was present. I heard Mr. Stevens, the defendant, make a statement relative to the re-renting of room 549 in the Empire Warehouse on or about January 5, 1938. At that time, he stated that he recalled such a conversation he had with Mr. Skampo. Mr. Cavanagh and Mr. Fischer, his attorneys, were present at that time. They were present in your (Mr. Hopping's) office at the time. Mr. Fischer and Mr. Barrett left the office. Mr. Fischer and Mr. Stevens were present when Mr. Fischer told Stevens that you wanted to ask him some questions and to answer the questions you asked. You asked Mr. Stevens if he recalled Skampo coming to the warehouse and talking to him sometime after January 5, 1938. Mr. Stevens replied that he did recall Mr. Skampo being there. You also asked him at that time if Mr. Skampo had asked to rent the room and Mr. Stevens replied he did. You asked what he told Skampo, and he said that he told him that the main office would not stand for anything like that. You asked if he didn't know at that time that the same room was being used by Johnson and Bagdonas, and he replied he did know. You asked if at the time of the rental of room 549 to Dracka and Skampo he assumed the responsibility himself. He said he did not, but that he called the main office. He said he did not remember who he talked to over there. He then said that he did not talk to W. T. or W. C. Carroll about it. When you asked him if he talked to Mrs. McShane, at first he was not sure and then when you asked him a second time, he said no, he did not. You asked if he talked to Mr. Barrett about it, and he said he didn't know if he did or not. When you asked him that question again, he said yes, he did talk to Mr. Barrett.

That was the substance of the examination.

[fol. 619] Cross-examination.

By Mr. Fischer:

I made notes of this conversation a few hours after it took place. It might have been three or four hours afterwards. This conversation took place before coming into the court room on the morning of May 14th. This conversation did not take over five minutes.

From that office, Mr. Stevens came down to the court room. I do not know whether you, Mr. Stevens and Mr. Hopping went into the Judge's chambers or not. You did go into the Judge's chambers, as I recall.

There is not a dictaphone in our office to my knowledge. There was not a dictaphone by which this statement was transcribed. I have not refreshed my recollection about this. It is clear to me as it was at that time.

I was in the court room yesterday, or the day before, when Mr. Hopping had a memorandum in his hand. That memorandum had been prepared by me. It was taken from my notes. I do not have the notes I made at the time or several hours afterwards. I might have destroyed them. I think the memorandum I made at this conversation covered about a page and a half. There was about a half page of my own notes. They were in long-hand and made during the noon hour after the Court had adjourned in my office. A stenographer in the office typed the memorandum. I dictated it to her four or five days ago. During that time, my memorandum had been in my desk. I discarded it after I had had it typewritten.

Mr. Hopping and I discussed using this testimony. I did not tell Mr. Stevens we were going to use it.

Mr. Hopping: The proofs are closed then, your Honor?

The Court: Proofs are closed?

DENIAL OF MOTION FOR DIRECTED VERDICTS

Mr. May: We desire to renew our motion at this time, if all proofs are closed.

The Court: Motion denied.

Mr. May: All motions made for a directed verdict, and may we have an exception?

The Court: Yes.

Mr. Frederick: And an exception to the same, in behalf of the defendant, Harry Braverman.

[fol. 620] Mr. Cavanagh: The motion in behalf of Barrett. The Court: Yes, denied.

Mr. Cavanagh: Motion in behalf of Stevens.

The Court: Yes, denied.

Mr. Cavanagh: Exception.

CHARGE OF THE COURT

The Court: Members of the jury: The proofs are closed, arguments have been had by counsel, respectively; it now becomes the duty of the Court to charge you with respect to the law involved in this case.

I am assuming that all of your jurors have no opinion at this time, and that you have not discussed this case among yourselves or with any other persons. The defendants Braverman, Wainer, Frank, Stevens, Barrett and Klein, are upon trial in this cause, based upon two indictments, one indictment running against Braverman, Wainer, Frank, Stevens, Barrett, and many others; and the others having pled guilty, or have not yet been apprehended. The other indictment, No. 25732, is against Harry Klein and other defendants named in the indictment No. 25571, but Klein is only charged as entering into a conspiracy with those defendants who are named as co-conspirators, but not defendants in that indictment.

The Act of Congress provides that if two or more persons conspire, either to commit any offense against the United States, or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of a conspiracy, each of the parties shall be guilty of conspiracy. I will define the nature of the crime later on.

Now, this indictment No. 25571 charges a conspiracy against Braverman, Wainer, Frank, Stevens and Barrett, alleging conspiracy, and numerous offenses, growing out of the alleged conspiracy. And permit me to say, in passing, that these indictments are absolutely no evidence against the defendants upon trial. An indictment is a formal charge, in legal phraseology, giving a defendant notice in legal terms of the crime for which he is placed

upon trial, and an indictment and the allegations therein, in each of these indictments is no evidence against the defendants. The Government must still prove its case. This indictment charges in the first count, 25571, that [fol. 621] these defendants entered into a conspiracy from the first of November, 1935, to the first of September, 1939, to commit a crime against the United States, to unlawfully, knowingly, carry on the business of wholesale and retail liquor dealers, without having the special occupational stamp, tax stamp, as required by law, and then, in the same count, the indictment charges that in pursuance to this alleged conspiracy, that numerous defendants committed overt acts, as I will define them later, in furtherance of the object of a conspiracy.

The second count charges that these defendants, excepting Klein, within that period, entered into a conspiracy to wilfully and feloniously possess distilled spirits, the immediate containers thereof not having affixed thereto stamps denoting the quantity of distilled spirits contained therein, and evidencing payment of all internal revenue taxes imposed on such spirits by law, and that in furtherance of that conspiracy, that certain overt acts were committed.

The third count charges that these defendants entered into a conspiracy to commit a crime against the United States, to unlawfully, knowingly, wilfully and feloniously transport large quantities of distilled spirits, the immediate containers thereof not having affixed thereto stamps denoting the quantity of distilled spirits contained therein, and evidencing payment of all internal revenue taxes imposed on such spirits, and that in pursuance to such conspiracy, certain overt acts are charged in the indictment in furtherance of the object of the conspiracy.

The fourth count charges that these defendants entered into a conspiracy to unlawfully, knowingly, wilfully and feloniously engage in and carry on the business of distillers without having given bond, as required by law, and with the intent on the part of the said aforementioned defendants and co-conspirators, to defraud the Government of the United States of the tax on spirits which would be distilled by the defendants and in violation of law, and then certain alleged overt acts are set forth therein.

[fol. 622] The fifth count charges that these defendants entered into a conspiracy to unlawfully, knowingly, wilfully

and feloniously remove, deposit, and conceal distilled spirits, in respect whereof a tax was then and there imposed by the laws of the United States, with intent to defraud the United States of such tax, in violation of law, and further, certain alleged overt acts are added to this count in the indictment.

The sixth count charges that these defendants entered into a conspiracy to commit a crime against the United States, and to defraud the United States, in that it would, during the time of this conspiracy, unlawfully, knowingly, wilfully and feloniously possess and cause to be possessed, keep in custody, control and cause to be controlled, certain stills and distilling apparatus, for the production of distilled spirits, and would set up and cause to be set up, the said aforementioned stills and distilling apparatus, without having the same registered with the District Supervisor of the Alcohol Tax Unit, Bureau of Internal Revenue, as required by law and regulations, and certain overt acts are alleged in this count of the indictment.

The seventh count, and last count in this indictment, charges that these defendants did unlawfully, feloniously, knowingly, and wilfully, conspire, combine and confederate, and arrange and agree together to make and ferment, and cause to be made and fermented, large quantities of mash, wort, and/or wash, to-wit, 37,500 gallons of mash, a mixture and compound fit for distillation, and the production of distilled spirits, in a building and on premises which would not be then and there a distillery or premises duly authorized and designated according to law as a distillery, and all in violation of law, and then certain overt acts are alleged and set forth, in this count in the indictment.

The other indictment, which runs against Harry Klein alone, and with other defendants named in the indictment, which I have just read, charges that Klein entered into a conspiracy with the defendants named in this indictment, and being the defendants named in the other indictment, but these defendants in this indictment are charged as co-conspirators, but not as defendants, therefore, all of these [fol. 623] defendants named in this indictment, except Klein, are upon trial on the other indictment which I have just read. Klein is upon trial upon this indictment, and there are seven counts in this indictment, alleging and charging certain offenses, as set forth in the indictment

which I have just read, and containing seven counts similar in language, and charges to the counts contained in the other indictment. In other words Klein is upon trial upon this indictment for the same offenses that are charged against the remainder of the defendants in the other indictment.

Now, those are the charges laid in these indictments, and are the charges upon which these defendants are upon trial. And as I have said to you, what I have read to you, and what is set forth in these indictments is no evidence against these defendants.

Now, I do not intend to review all of the evidence in this case, but I will refer to certain portions of the evidence so that it may aid you somewhat in applying the legal principles of law, which I will give to you, and will aid you in analyzing the evidence and in determining the cause that is here presented to you. If I should fail to refer to certain portions of evidence, you must not conclude that I deem that evidence unimportant, because all evidence which has been presented here is important and must be considered by you in determining this case. If I refer to certain portions of evidence, you must not conclude that I deem that evidence the most important, or the least important. I merely refer to it to illustrate to you the theory of the claims made by the Government upon one side, and these defendants upon the other.

Now, the theory of the Government in this case, of course, is conspiracy. A conspiracy is a very peculiar offense. I don't know whether you have ever heard a criminal case on conspiracy in this court while you have served as jurors. All offenses in a Federal Government are made so by an Act of Congress. The Federal Government has no so-called common law offenses, as we have in the State of Michigan. A conspiracy is an unlawful agreement entered into by two or more persons. There must be at least two. To commit a crime against the United [fol. 624] States, or to defraud the United States; and in order to complete a charge under that law, some one of those members of the conspiracy must do an act, an overt act, called—open act, open to view, in furtherance of the object of the conspiracy. I have made this reference as an illustration, and while it is a homely and a simple reference, yet it somewhat aids the jury in knowing the nature of a conspiracy. At common law, without the Act of Congress, if two people sat down and agreed to commit a crime, they

were guilty the moment they agreed upon it, and whether they ever committed the crime, makes no difference. The gist of the offense is the unlawful agreement. Now, a federal offense is different from that; it has another added feature, and that is this: If two people agree to commit a crime against the United States, or to defraud the United States, and one or the other does an act in furtherance of the object of the conspiracy, the offense is complete, even though they never complete the act. So you see, conspiracy is a peculiar offense. The law is aimed at the unlawful agreement.

Now, my illustration is this: If two of you sitting in your jury room should quietly and secretly visit with one another and say, "We will rob this post office building tonight, or tomorrow night," and you did nothing more, there is no violation of the Federal Act. But if, upon the other hand, you spoke about it, and agreed upon it, that tomorrow night you would rob this post office, and one of you, without the knowledge of the other, went down into this building in the corridor to view the premises, looking around to see how you could get in there and how you could get out, where the money was that you were proposing to rob the Government of, how easily it could be obtained, that conspiracy is complete, because that person did an overt act, an open act, in furtherance of the conspiracy, even though you never robbed the post office. But if, upon your separation, one of you went home and sat down and began to think just how you could figure out to rob that post office, to get in there and get out of there, and you were communing with yourself alone, that is not an overt act. Why? Because it isn't open to view. No one could [fol. 625] see you thinking. You did nothing that was open to view. An overt act, and open to view, does not mean you must go and get somebody to be present when you do it. It means that it can be seen.

Now, supposing that the other of you, without knowledge on the part of the other co-conspirator with you, should quietly go to your neighbor and say, "I want to get a revolver; I am going to rob this post office tonight or tomorrow night," and that person gets you a revolver and gives it to you. The moment he does that, you have committed an overt act, and he has committed an overt act, with knowledge that you are proposing to rob the post office. But supposing you said to him, "I would like to

borrow your revolver," and he asked you, "What for?" and you said, "Well, I want to shoot a rabbit or a cat," or something, and he gets the revolver for you; he is not a member of the conspiracy. Why? Because he has no knowledge of a conspiracy.

And not only that, but supposing that person from whom you proposed to borrow the revolver says, "I haven't a revolver, but my neighbor over here has," and he says, "I will get it for you," and he goes over to the neighbor and he says, "This gentleman over here at my house by the name of Brown is going to rob the post office tomorrow night; they want to get a revolver. They asked me for one. I haven't got one, and I know you have one. Will you let me take it?" He says, "Sure." And he gives it to you, and you give it to one of the conspirators. That man who loaned that revolver, the second man, is a member of the conspiracy, because he knows you are going to rob the post office. He has got knowledge of a conspiracy. But if you said nothing to him as to what they proposed to do with it, he does not become a member of the conspiracy. So, as some counsel has said here, a conspiracy is like a snowball rolling downhill; the farther it goes, the larger it gets. By way of accumulation, it gathers up snow.

So conspiracy is the gist of the offense. An overt act is a public act. It does not mean you have got to go out on the street corner and declare to the public that you are going to rob the post office. It simply means that any act [fol. 626] that you do in furtherance of the object of the conspiracy is an overt act. It is done openly, where someone could see it, if they were there. Now, supposing you never robbed the post office; you two started it; one of you went and borrowed the revolver from this other person, and he tried to get it, and he says, "I haven't one now, but I will go to my neighbor and get it," and he went to his neighbor and told him what it was about, and he gave you the revolver; all four of you are members of the conspiracy, and it is a violation of the Federal Act of Congress, and you could be prosecuted for it, even though you never robbed the post office. Now, that is a simple illustration of conspiracy.

So, the offenses charged here are conspiracy, and it is the claim of the Government in this case, and, as I say, whether or not those claims are sustained and established by the Government is the question for you to determine,

under the rules of law which the Court will give you. The Government claims that these men, all of these men, and in passing, I wish to say this, that the fact that many of these defendants charged in these indictments have pled guilty is absolutely no evidence against these defendants who are upon trial. You could not conclude from that fact they have pled guilty, and therefore these defendants upon trial must be guilty. You could not do that, under the law. You would violate your oaths if you did it. The Government, briefly, claims this: That these men entered into a conspiracy, what would be known, in law, as a continuing conspiracy. The illustration that I gave you about robbing the post office was just one act. That would not be a continuing conspiracy. It only involved one robbery. The Government claims in this case that this was a continuing conspiracy. It started back at the time alleged in the indictment and continued down for several years. That these men, or some of them, got together and proposed to engaged in the illicit handling of alcohol, the manufacturing of alcohol. The Government claims that some of them set up stills, and their plan and scheme was, as claimed by the Government, that those stills would engage in making alcohol, distilling it from this mash, and that [fol. 627] that alcohol in Chicago and other places, wherever it was made, would be sent in Chicago to the Empire Warehouse by various persons, the Government claims. And the Government claims that in pursuance to that, it was arranged by others that when that was made, a still would be set up one place, and a still was set up in another place. That alcohol from over in that Country, Chicago and Racine, Wisconsin, would be sent to the warehouse, the Empire Warehouse, in Chicago. The Government claims that some of these men went to this warehouse in Chicago and engaged a room there and it claims that under the guise of handling a product known as Rug Cleaner, or Rug Life, that it claims that some of these defendants transported that alcohol to Chicago to this warehouse, and it claims that it was handled in the warehouse by one of the defendants here who was the warehouseman, Mr. Stevens. It claims that when it went there, it went into this room, that the warehouseman, Stevens, handled it on the elevator, and took it up on the floor, and that the men were there and they took it into the room, and it claims that Stevens helped to carry it into the room, and it claims

that great quantities of this alcohol were delivered to this warehouse in this same room. It further claims that in that warehouse, it was packed in boxes, boxes that were obtained in the City of Chicago, and were drawn from the factory to the warehouse and delivered to the warehouse to go to this rug cleaning establishment, whatever the name was. And it claims that those boxes and other products were taken to that warehouse under names different than the rug cleaner, or whatever it was called—Rug Life—and delivered there. The Government claims that subsequently that alcohol was crated in cartons and in boxes, and shipped and transported by the trucks of the warehouse company; to certain trucking stations or docks, as they called them, and that, in turn, that quantity of alcohol was taken from there and shipped to Detroit and Cleveland and other places.

The Government claims that they continued for some time. The Government claims that various and numerous [fol. 628] persons had delivered great quantities of alcohol there, and that this quantity was delivered to this room.

The Government claims that Stevens, who was the warehouseman there, helped to crate these cans of alcohol, and to stencil them and helped in making a stencil to be placed upon the box, giving the name of the consignee to whom it would be shipped. And the Government claims that those operations were going on for several years; that another tenant would give up the room, and another tenant would come along. The Government claims that another tenant who rented the place was required to pay the back rent, which was then owing by the former tenant, to the Empire Company; and the Government claims that during all of that time there were different tenants there in possession; that different products were brought there to this room, to this warehouse, and delivered there under various and different names, and that it was handled there, and that it was aided by Stevens in the handling of it.

The Government claims that as to the Defendant, Barrett, that he was the man in charge; he was the General Manager. It claims that he had knowledge of what was going on there.

The Government claims that he was advised, when an occasion arose as to the rental of the premises to a subsequent tenant for the same business; that he was advised

at that time of all that was going on there, and it claims that he approved the rental of it to these people.

It further claims that that scheme, that plan, was carried on for a long period of time; for several years. It claims that these defendants had a part to do in it, and I will charge you especially upon the question of the liability of the Defendants Barrett and Stevens later on. And the Government claims, and that is, briefly, that these Defendants are all liable because it claims the evidence shows that they entered into a conspiracy to commit a crime against the United States; to violate the law, handling illicit alcohol without tax, operating a still, in violation of the regulations, transporting alcohol, and numerous offenses as charged in this indictment.

[fol. 629] Now, as I say, briefly, that is the claim made by the Government, and whether or not those claims are established to be true, is a question for you to determine under the rules of law, which I will give you. And if I fail to refer to some other incidents, or any evidence, you must not conclude that I deem that this is the only important evidence in this case, because all of the evidence here presented is important, and must be considered by you in arriving at your verdict.

Now, the Defendants, in reply to those claims—Stevens and Barrett—there is no dispute in this case, but what the Empire Warehouse Company in Chicago was a warehouse company engaged in doing a general warehousing business, the storing of numerous kinds of merchandise, furniture, and other things that have been described here, as you remember.

The Defendants claim as to Barrett, that he was the general manager there. It claims that he had nothing to do whatsoever with any of the operations that were going on in this room. It claims that, in their general warehousing business, that they pursued the usual course with all other tenants, that when they rented a room, it was their room, and they had no control—that is, reasonable control—of that particular room, as long as the rent was paid. They claim that as to Barrett, that he had nothing to do with the operations of these men in the handling of illicit alcohol in that room, or in their building, or in the transportation of alcohol by their trucks. He claims that he never had any knowledge, whatsoever, any guilty knowledge, that the law was being violated in this ware-

house. He claims that he did not approve the rental, but he claims that he had no knowledge that the law was being violated in this room, as claimed by the Government. And he claims further that he never did any act, either in permitting them to continue to occupy the room, or the privilege of the warehouse, or in lending the use of their trucks in the transportation of alcohol from this warehouse to the stations, or in procuring supplies, boxes, cartons, or other things to be brought to this room, in the packing of this alcohol.

[fol. 630] As to the Defendant Stevens, it is his claim that he was employed in the warehouse—in this warehouse—there were numerous warehouses owned by this company in the City of Chicago, but, as I understand, this is called the Empire Warehouse; that he was employed there as a warehouseman; that it was his sole duty and responsibility to operate the elevator, and no other person should be permitted, or was permitted, to operate it; that merchandise was brought into that elevator, unloaded at the docks near the elevator, that it was placed upon the elevator, and taken to the particular places where it should be delivered. It is his claim that on numerous occasions, cans were brought there, and cans in cartons, and other products, merchandise, was brought there, for these parties room 549—and to be delivered to room 549, known as the Rug Life Company, and it is his claim that he did that, he delivered that merchandise and boxes, or whatever it was, because it was his duty to do so as the warehouseman; that it was his duty to operate the elevator. He denied that he ever helped pack any of this, but he admits he made some stencils for them; but he claims that upon several occasions, when this merchandise was to be shipped out, and to go out late in the afternoon, that in order to help them get it out on time, that he would go in and do something, but it is his claim that he never knew or had any reason to suspect or believe that these parties were engaging and engaged in the illicit alcohol traffic. He claims what he did, he did innocently; that he had no guilty knowledge whatsoever in respect to it, and he claims he is not guilty of being a party to a conspiracy, or the helping, the aiding, or abetting, or assisting others in carrying out the conspiracy. As to the other Defendants upon trial, they deny that they ever entered into any conspiracy charged in these indictments. They deny each and every

offense set forth in these indictments. They deny that they ever engaged in the manufacture or distillation of alcohol, the shipping of it, the possession of it, the transportation of it. They deny that they ever possessed alcohol, and they deny each and every allegation set forth in this indictment.

[fol. 631] So, as I say, in referring to the claims of the parties, I again say to you, if I have failed to refer to some portion of the evidence, you must not conclude that, if you can think of something else that I haven't referred to, "The Judge probably doesn't think that is important, and therefore he didn't say anything about it." That isn't so; I merely, briefly go over it so that you can see the questions that are here for your determination.

Now, those are the claims of the parties—the Government upon one side; these Defendants upon trial, upon the other. You understand, of course, that you are the sole judges of the facts. The facts are made up by evidence, oral and written, witnesses upon the stand, documents which have been offered in evidence, Exhibits which have been offered in evidence. You are to determine where the truth lies. In weighing evidence, you should consider the evidence in all of its phases. You should observe the witnesses upon the stand, their manner and their appearance, whether they appear to be truthful, or otherwise; whether their evidence is corroborated, backed up or sustained by other evidence, or surrounding facts and circumstances; whether or not it is contradicted by their own testimony, or the testimony of other witnesses, or the surrounding facts and circumstances.

You weigh the evidence; you determine who is telling the truth, and, as I say, as men and women of experience and observation in life, you naturally would observe the manner and appearance of a witness upon the stand, their actions and conduct, what they say, whether they appear to be telling the truth, or otherwise. You could not arbitrarily say that you would not believe a witness, unless you had a good reason for it, and that reason must be one growing out of the evidence in the case. You are the sole judges of the facts. And in weighing the evidence of a witness, you observe it in its various phases. Is that particular portion of evidence testified to by that witness—is that corroborated by these witnesses over here?

Is it sustained, or is it contradicted? If so, how is it contradicted? Who is telling the truth? You should also have in mind the interest of a witness. All Defendants [fol. 632] are interested in the case, and in the result, at least, and in weighing their evidence, you should have in mind the fact that they are Defendants interested in the case and in the result.

However, if you are persuaded of the truth of their testimony, it would be your duty to believe them, notwithstanding the fact that they are a defendant interested in the case and in the result. Evidence given by others—so-called co-conspirators, or what we would call accessories to the crime—in weighing their evidence, you should scan that evidence carefully, having in mind the testimony which they give, whether or not they would have a purpose or object in testifying as a witness, and giving the evidence which they give. After you have weighed their evidence, if you are persuaded of the truth of their testimony, you should believe them, notwithstanding the fact that they are parties to the crime and have testified as witnesses against the other defendants.

These Defendants, each and all, come into this Court, presumed to be innocent of the offenses that are charged here against them. This presumption of innocence remains with them throughout the trial, and until the Government has established their guilt beyond a reasonable doubt. There is no burden upon the Defendants to prove their innocence. The burden is upon the Government to establish their guilt, under the rule of law which I have given you. A reasonable doubt in law, means just what the words fairly imply in their ordinary use and acceptance—a reasonable doubt, a doubt based upon reason, a doubt growing out of the testimony in the case. It is not an imaginary doubt or a captious doubt, or a possible doubt, but it is a doubt based upon reason and common sense. Upon final analysis it is that doubt which you would have in your minds after you have carefully weighed all of the evidence, so that you would be unable to say that you are satisfied to a moral certainty of the truth of the charges made against these Defendants.

Some evidence has been given here of the good reputation of the Defendants Stevens and Barrett. I charge you that evidence of good character and reputation—a [fol. 633] man's good character and reputation is a valu-

able thing, in all circumstances, and such evidence is proper to be considered by you, to determine whether or not a person having that good character and reputation would commit such offenses. It often avails to acquit a man and to create a doubt as to his guilt in such circumstances. It is not usual, perhaps, for men of good character and reputation to commit crime, but it is possible, and men who have stood high have been convicted.

You will consider this evidence, with all of the rest of the evidence in the case, and give the Defendants Barrett and Stevens all benefit of it that you believe them to be entitled to. If you can reconcile all of the evidence in this case upon the theory of innocence of the Defendants, it is your duty to so reconcile such evidence and acquit the Defendants.

Now, I have said to you, and have quoted to you the Act of Congress as to a conspiracy, and that is the law upon which these charges are based, solely on the Act of Congress. If two or more persons conspire, either to commit any offense against the United States or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect, carry out, the object of conspiracy, each of the parties to such conspiracy, shall be guilty of an offense.

I charge you that to constitute a criminal offense, under this law, the object of the conspiracy must be to commit some offense against the United States. That is, to do some act made a crime by the laws thereof, or to defraud the United States, and something must be done by one or more of the conspirators to effect the object of the agreement. The definition of this offense would be "an agreement between two or more persons to do some act, which, by the laws of the United States, is a crime, and the doing of some act by one or more of those who had so agreed in furtherance of, and to effect the object of the agreement." The elements of conspiracy are, first, an act of two or more persons conspiring together; second, to commit an offense against the United States by defrauding the United States, or, in any manner, or for any purpose. [fol. 634] Third, doing of an act to effect the object of the conspiracy. To constitute a conspiracy under this law, there must have been an agreement between the parties, a unity of design and purpose, and an overt act com-

mitted by one for the purpose of effecting the object of the conspiracy.

The gist of the offense is conspiracy, a combination or agreement, to effect an unlawful end, which offense is completed only on some one or more of the parties doing an act to effect the object of the conspiracy, termed an overt act. The gravamen of the crime is the conspiracy, the overt act being required only to bring it within the operation of law. A conspiracy is a combination of two or more persons by concerted action, to do an unlawful thing, and no formal agreement is necessary, a tacit understanding being sufficient, and it is not essential that each conspirator have knowledge of the details, the means to be used, or that the agreement be enforceable. It is not necessary that the conspiracy should originate with the persons charged. A conspiracy includes, as an element, a corrupt motive. It exists whenever there is a combination, agreement, or understanding, tacit or otherwise, between two or more persons for the purpose of committing unlawful acts. It means that on the part of two or more persons there was a common purpose, supported by a concerted action to defraud, and that each had the intent to do it; that it was common to each of them, and that each understood the other as having that purpose.

It is not necessary that the conspirators should meet together in order to constitute the unlawful combination. If they have a mutual understanding, and act through one or more individuals, as a consequence of such mutual understanding, the conspiracy may be complete. Indeed, it is not necessary that all of the conspirators should be acquainted with each other. If they conspire to accomplish the illegal purpose through one common acquaintance or go-between, the conspiracy may be complete. An intention to take part in a conspiracy is always essential to the commission of the crime of conspiracy, and where it is charged that the conspiracy was to defraud, an intention to defraud is essential. But while the conspiracy cannot exist without a [fol. 635] guilty intent being then present in the minds of the conspirators, this does not mean that they must know that they are violating the statutes of the United States.

Having in mind that charge, with reference to a conspiracy, you must then proceed under the rules of law, which I have given you, to determine, first, was there a conspiracy entered into by these Defendants upon trial, as

I have defined a conspiracy. I think, logically, however, I should charge you upon this question; as to the Defendants, Barrett and Stevens, I think they are entitled to a special charge, for this reason: The evidence is undisputed that these two men were engaged in the warehousing business, and therefore, authorized by law to do a warehousing business, and I think, too, that the evidence is undisputed that they did a general warehousing business. You could readily see the rule would be a little different with them than it would be with one of us. For illustration, supposing we lived in the City of Detroit, and we had a barn or a garage out in back, and someone came along with a big load of cans and wanted to know if they could put their cans in our garage, or your garage. You are not in the warehousing business, and you allowed them to put them in there, and there were suspicious circumstances surrounding that, and so forth.

The rule would be different with you than it would be with a warehouse man, although there is a rule of evidence, or a rule of law which is applicable to them, which I will charge you on, but you would be upon notice—your suspicions would be aroused—"What is this?" "Why does he come out here and ask me to put this in my garage, why does he do it? Why does he come around at night?" Or, "Why does he do this?" In other words, the first thing that occurs to you is, why is this being done? You would be liable if you permitted him to do it continuously. In this case, these people were engaged in the warehouse business. The only theory upon which the Government can convict them, under this evidence, is this. There must have been a practice by these men who were dealing with the warehousing company in that room in there, going there, and coming there, in their operations in the unloading of cans, and in the shipping out of cans, in the receiving of merchandise from factories, boxes, and other things, directed in the name of another consignee other than the Rug Life, and delivered there to them in this room.

You must consider all of that evidence, because, in the very first instance the warehousing company has a legal right to rent that room, and if it should subsequently appear to the officials or the warehouse man, or the man in charge, in the renting or in the control of it, or in the handling of the merchandise—if it should appear to them,

acting as a reasonably careful and prudent person, that in this case illicit alcohol was being handled there, in violation of law, was being received there, was being shipped out there, and transported on the trucks—if it should appear to a reasonably careful and prudent person that that was going on, then these Defendants would be chargeable with guilty knowledge, and it would be their duty to eliminate it and stop it, but if they permitted it to continue, then they would be guilty as an aider and an abetter, and in committing overt acts in the furtherance of a conspiracy.

Now, that requires an analysis of all of the evidence in the case, and you cannot say that, "Well, they ought to have known it; they should have known it." That is not the rule. The Government must prove it, as to them, not as to you. Now, that involves an analysis of all the evidence in the case. You cannot arbitrarily say that they had guilty knowledge of what was going on there. The theory upon which they seek to hold Barrett is this: He was the General Manager, had charge and control of that warehouse, of all the warehouses, and this one. The Government claims that at times—several times, it was rented and re-rented. The Government claims that he was advised of what was going on up there, what was carrying on up there, what they were doing, and so forth. And the Government claims that he, with that knowledge and other knowledge, said, "All right, go ahead and rent it, okay." He denies that. He denies that he ever had any knowledge as to what they were doing there. As to Stevens, the Government claims that Stevens was taking part in it, other [Vol. 637] than his duty as the warehouse man, and the operator of the elevator.

Now, having in mind the claims of the parties, and I am not referring to all of the evidence—you remember what the Government claims what went on there. The Government claims that thousands of gallons of alcohol were shipped in there and shipped out. It was boxed in there, crated in there, stored in there, in circumstances that might and did arouse the suspicion of a reasonably careful and prudent person in those circumstances. In other words, the Government claims that that conduct, having continued there for that length of time, that these men, in permitting it to continue, are guilty—are liable, are held to have guilty knowledge of the violation of the law.

Now, if you find that that is true, and they had guilty knowledge, they would have a reasonable time to stop it. But if they permitted it to continue, then they are guilty of aiding and abetting, helping, in this conspiracy, and committing overt acts to help it, to further the object of it.

So, upon those two Defendants, you must analyze that evidence carefully. As I say, you cannot arbitrarily say that "Well, they ought to have known it." That is not the rule at all. The Government has the burden to show that they, as reasonably careful and prudent men, in charge and control of this warehouse and of this room, which was rented to some of these alleged conspirators—that they, as reasonably careful and prudent men in the operation of their business, would learn and must have known what was going on there, that the law was being violated. It is not necessary for the Government to prove that someone went to them and said, "Here, those fellows are handling alcohol in there, in violation of the law." It is not necessary for the Government to prove that. And in analyzing the evidence, you must do so, fairly, impartially. You must say—the position that those defendants were in, in that warehouse, operating it—was there enough done there in the way in which these men operated, in the way in which it was rented. Now, the Government claims that one feature is this—renting that room from one to another, and they were required—this next tenant who came along, was required to pay the unpaid rent of the previous tenant. Well, there is no evidence that that is the practice in warehouses. The Government claims that that particular evidence indicates that the defendants Barrett and Stevens knew that they were the same crowd coming along to rent the room for the same purpose and, therefore, they would make them pay the back rent. They, upon the other hand, the defendants, deny that. They deny that that ever occurred. They deny that they even knew that it was the same crowd, that they came along, and rented it to these men in the ordinary course of business.

Other facts to be considered is that it was used for the same purpose, Rug Cleaner, as indicated on the packages and bills that came in there, and that the cans were coming there in cans, and shipped out and transported, and it is for you to determine from all of the evidence in the case, were those men there really engaged in the handling of a Rug Cleaning product, or were they engaged in the hand-

ling of illiet alcohol, and if so, would that be observed by the Defendants, by Stevens, the warehouse man, who, the evidence shows was there most of the time,—I mean, in the warehouse, operating the elevator, receiving merchandise, delivering it to various floors—would he, as a reasonably careful and prudent person, in his duty there, his duties and responsibilities—would he find out that those men were engaged in an illegal traffic, in illicit alcohol? Would he have guilty knowledge of the fact that they were violating the law, or would he not?

If you find under the rules of law which I have given you, that from what was going on there, he was chargeable with that knowledge, according to the evidence in the case, he was chargeable with guilty knowledge—if you determine that he was, and as to Defendant Barrett, whether he was chargeable with guilty knowledge of the violation of law in that warehouse—if you find those facts to be established to be true, then it would be your duty to find them guilty; but unless you do so find those facts to be true, it is equally your duty to find them not guilty.

So, it is a question as to what knowledge they would derive from the operation of their warehouse. That [fol. 639] should be done fairly, impartially, without prejudice and without sympathy. You cannot arbitrarily arrive at a conclusion. You must analyze the evidence and say, "What does that mean to a reasonable, ordinary person?"—not a detective, or not a child—a reasonably careful and prudent ordinary person. What does it mean? Would it arouse their suspicion to cause them to make an investigation and determine what was going on there, or was there anything done there that would at least arouse anyone's suspicion. They have the right, as warehousemen, and in their duties there, to proceed upon the theory that their tenants are not violating the law, and are complying with the law, and until they see something going on there, happening, why they have the right to continue in that assumption, but if something is brought to their attention, the attention of a reasonably careful and prudent person, that the law was being violated, that that was not just Rug Cleaning Fluid, but that it was alcohol, and that it was handled in violation of law, and stored there and transported there, and there were no stamps on it, and things of that kind—if they should have taken notice of that from all of the facts, then they would be chargeable

with guilty knowledge, and if they permitted it to continue, they would be guilty of aiding and abetting in the commission of these offenses.

Now, as to the other defendants—So, I say, you will first determine whether or not there was a conspiracy entered into. The reason I added this, parenth-cally, was that I wanted to charge, specially as to these two defendants, because that was upon the theory of finding whether there was a conspiracy. Now, you will determine as to these other defendants, was there a conspiracy, as I have defined it, in the law? As the law says, it is not necessary for two men or four men or five men to sit down at the counsel table with pencil and paper and enter into a written agreement. A conspiracy may be established by circumstantial evidence, by inferences, to be drawn from the evidence. So, there is no evidence here that these men sat down at the counsel table and drew up an agreement. As [fol. 640] I have charged you, it is not necessary that they all meet together. If two men launched a conspiracy, and in the progress of that conspiracy, as I have indicated, before they got through, there were a hundred people belonging to it—the charge in this indictment is against twenty-five or thirty people—having in mind the nature of this alleged conspiracy to manufacture alcohol, to ship it, to transport it, to store it in a warehouse, to crate it, and pack it, deliver it to transportation companies, to ship it to Detroit, to ship it to Cleveland—how many men would it take to carry out that plan? If all of these men had knowledge of the facts, entered into it, they are all members of the conspiracy, and any act done by a member of the conspiracy, an overt act—he is a member of the conspiracy, and even though he did one overt act and never did another one, but continued, he is guilty of all acts done by co-conspirators, all overt acts that are committed from the inception to the conclusion of the conspiracy.

In other words, it is the theory of agency in law, if you appoint a man as your agent to do certain things for you, he is going to continue to be your agent for that particular thing until you nullify his agency. So, as I say, the first question for you to determine is, was there a conspiracy? If so, were these defendants parties to it, the two defendants, Barrett and Stevens, as I have indicated, under the law, and the other four defendants, as the Government claims, that they were parties, they delivered the alcohol,

they manufactured it, they transported it, they sold it; they were engaged in carrying out the conspiracy. Why, if one man should organize a conspiracy and the plan was to engage in illicit alcohol traffic in violation of law, and he was merely the top man, and never did another thing, and he, in turn, through his various lieutenants; down the line, engaged numerous various people to haul, to manufacture, to pack, to stamp, to ship, to deliver, to sell, to deliver to saloons or houses, or whatnot, and he at the top never had anything to do physically with what those men were doing—he is a member of the conspiracy, even though he does nothing more than organize the conspiracy. And another thing is this: If a man becomes a member [fol. 641] of the conspiracy, he can do any act, an overt act, an open act, to carry out the conspiracy, and it is binding upon all parties, even though someone did not say to him, "Jones, you go down and see what you can do about this, or about that." That is the peculiar thing about a conspiracy; it binds every member of the conspiracy, if there is an act done in furtherance of it, to carry it out. For illustration, suppose I had a lot of liquor on hand to be manufactured, and they simply said, "There is a man here that has got a lot of liquor up here, and they are manufacturing the whiskey, and they have been storing it down in the warehouse, and I want to get a truck to draw some of it down to the transportation company—" I forget what they call it, Roadway—"go and get me a truck, will you, to draw this liquor down there, or if you have got a truck; bring it along and draw it." If that man does it, he is a member of the conspiracy. Why? He does an overt act, when he knows there is a conspiracy there, a violation of the law. That is an overt act, that is an open act.

So, you determine, first, was there a conspiracy? If you are unable to find there was a conspiracy, that is the end of your deliberations, and your verdict must be "Not Guilty" as to all defendants. If you find there was a conspiracy, do you find that the defendants Barrett and Stevens, were members of it, as I have defined the law, and if you find there was a conspiracy, were these defendants—these other four defendants—members of it; and if there was a conspiracy, were there numerous overt acts, and I say to you, that under the testimony in this case, if you believe it, there were many overt acts established here, many acts seeking to carry on the conspiracy.

Now, as I say, the first question for you to determine, under the rules of law which I have given you, having in mind the burden is upon the government—was there a conspiracy to violate the law, as charged in these indictments? If you find there was, were these six defendants members of it? Or if all six of them were not members of it, were some of the defendants members of it? If you are unable to find that any of these defendants were members of the conspiracy, then that is the end of your deliberations, and [fol. 642] your verdict must be "not Guilty." If you find some of these defendants were members of the conspiracy, and others were not, it is your duty, under the law, to return a verdict of "Guilty" under the particular counts contained in these indictments, naming the persons whom you would find to be guilty.

Only because of the fact that some argument has been made in respect to the fact that some of these defendants here were not in Detroit, or something was done outside the State of Illinois, or some other states, under the law, a conspiracy prosecution can be launched in any district of the District Court of the United States where an overt act is committed. You are not concerned with that, anyway, because it is a question of law, but inasmuch as some argument has been made about it, I say to you, that is the law. In other words, if they entered into a conspiracy in Illinois or Chicago or in Wisconsin or in Indiana, to engage in this illicit alcohol traffic, and that liquor was delivered here in Detroit under an arrangement or a sale to someone here in Detroit, and that person in Detroit received it and sent the money for it and paid for it, that is an overt act committed in Detroit. Detroit is within the jurisdiction of this court, so it is possible, under the law, even though a conspiracy is committed in another state, if an overt act is committed in a remote state, the prosecution can be launched in any state in which an overt act is committed in a conspiracy.

I think I should further charge you that all persons working together in the furtherance of a common design are members of the conspiracy, although the part anyone is to take is subordinate, or is to be executed at a remote distance. It is not necessary that each conspirator participate in each step or stage of the common general design. One of them may do one thing, another another. Some may take major parts, while the participation of others

may be in a minor degree. The mere knowledge, acquiescence, or approval of an unlawful act, without cooperation, or agreement to cooperate, is not sufficient to constitute one a party to a conspiracy to commit the crime. It requires more than proof of a mere passive cognizance of a [fol. 643] crime on the part of a defendant to sustain a charge of conspiracy to commit it. And you must find that the defendant did some act, or made some agreement, showing an intention to participate in some way, in such conspiracy.

One who aids or abets a conspiracy, after its formation, with understanding of its purpose, becomes a party to it. One who comes into a conspiracy after it has been formed, with knowledge of its existence, and with a purpose of forwarding its designs, is equally as guilty as though he had participated in its original formation.

All who participated in unlawful acts at any time in furtherance of a conspiracy, are equally liable as co-conspirators, regardless of whether they were original parties to the conspiracy or not. One may join a conspiracy after it has been formed, and by knowingly participating in conspiracy, become party thereto, as though he had conceived the plot.

A person entering a conspiracy, after its inception, but prior to its consummation, is deemed a party to all acts done by his co-conspirators, either before or after his entering the plan, and, as I have charged you, that a conspiracy may be established by circumstantial evidence, by proof of attendant facts and circumstances from which the natural inference arises that the defendants were engaged in the unlawful conspiracies charged in the indictment.

Now, I charge you further that under the law it is your duty, as jurors, to determine this case fairly and impartially, without any prejudice or without any sympathy. Your verdict must be based solely on the law and the evidence that is presented here in open Court. If, after an analysis of all of the evidence in the case and the charge of the Court, you are satisfied that all of the defendants charged in these indictments are guilty, the form of your verdict would be, "We find the defendants guilty as charged." If you are unable to find all of these defendants guilty under the law and under the evidence, but should find some of the defendants to be guilty, then the form of your verdict would be, "We find the defendants—" naming

them—"guilty as charged in the indictments." If you are unable to find the defendants guilty under all counts in the [fol. 644] indictments, but should find them, or some of them to be guilty under certain counts in the indictments, then the form of your verdict would be, "We find the defendants—" naming them—"guilty as charged in the particular counts contained in the indictments." If you are unable to find these defendants guilty under the law and the evidence presented in this court, then it is your duty under the law to return a verdict of "Not Guilty." Any exceptions or requests?

Mr. Frederick: I wish to note an exception to the Court's failure to give the requests to charge as heretofore presented.

The Court: All right.

Mr. Frederick: All of them.

The Court: Yes.

Mr. Dougherty: If the Court please, I have read the suggestions of Mr. Frederick—that is, I worked on them with him. May I have the benefit of those suggestions, as to the defendant Wainer?

The Court: Yes.

Mr. Dougherty: Thank you.

[fol. 645] IN UNITED STATES DISTRICT COURT

CERTIFICATE OF COURT TO BILL OF EXCEPTIONS—Filed February 27, 1941

For and inasmuch as the matters above and hereinbefore set forth are not of record, I, Edward J. Moinet, Judge of the District Court of the United States for the Eastern District of Michigan, being the Judge before whom the said case was tried in and within said Eastern District of the State of Michigan, have, at the request of the defendants, and upon the consent of the District Attorney of the United States for said Eastern District of Michigan, settled and signed this Bill of Exceptions, which contains a substantial statement of all the proceedings in this case. And I do further certify that so much of said testimony as is set forth by questions and answer is so set forth as being necessary to a proper understanding of the matters in issue in said cause.

And I do further hereby certify that the time for the settling and signing of the Bill of Exceptions has been duly extended by successive orders of this Court up to and including and covering the date hereof.

Edward J. Moinet, (U. S. Dis. Judge).

Dated: Detroit, February 27th, 1941.

[fol. 646] IN UNITED STATES DISTRICT COURT

SUBSTITUTION OF ATTORNEYS—Filed February 28, 1941

I hereby consent to the substitution of Donald B. Frederick as attorney for the above named appellant, Morris Frank, in my place and stead.

Alfred A. May.

To Hon: John W. Menzies, Clerk, U. S. Circuit Court of Appeals, Cincinnati, Ohio.

Please take notice that I am herewith filing my appearance as attorney for appellant in the above entitled cause, having been substituted in the place and stead of Alfred A. May, formerly counsel for said appellant.

Donald B. Frederick, Attorney for Appellant.

To: John C. Lehr, United States Attorney, Federal Building, Detroit, Michigan.

Please take notice that I have been substituted as attorney for appellant in the above cause.

Donald B. Frederick, Attorney for Appellant.

Business Address: 1114-1118 Buhl Building, Detroit, Michigan.

Dated: February 27th, A. D. 1941.

[fol. 647] IN UNITED STATES DISTRICT COURT

PETITION FOR ORDER NUNC PRO TUNC EXTENDING TIME WITHIN WHICH TO FILE AND SETTLE BILL OF EXCEPTIONS ON APPEAL—Filed February 28, 1941

Now comes Morris Frank, petitioner and appellant herein, by and through his attorney, Donald B. Frederick, and in support of this, his motion for the entry of an

order nunc pro tunc extending the time within which to file and settle the bill of exceptions on appeal, respectfully presents unto this Honorable Court as follows:

1. That on the 17th day of June, A. D. 1940, your petitioner and appellant herein was one of several defendants convicted in the United States District Court for the Eastern District of Michigan under an indictment containing seven counts.

2. Each count of the said indictment charged a conspiracy by the appellant herein and some thirty other persons to violate certain sections of the Internal Revenue Code.

3. Upon the trial of the cause held in the District Court, your petitioner and appellant was represented by Alfred A. May, a practicing attorney of the City of Detroit.

4. Following the convictions as aforesaid, certain friends and/or relatives of your petitioner retained the services of the said Alfred A. May to represent him on an appeal from his conviction to this Honorable Court for a stipulated fee, the major portion of which has to date been paid, so your petitioner is informed and verily believes the fact to be.

5. Pursuant to this employment, notice and grounds of appeal were filed for and in behalf of your petitioner, by the said Alfred A. May, as more particularly appears from the files and records in this Court and cause.

6. At the present time, and since his conviction, your petitioner has been confined in a Federal penal institution pursuant to the sentence imposed by the United States District Judge, his election to enter upon the services of sentence having been heretofore filed in this Court and cause pursuant to the Rules and Practice of Criminal Procedure as promulgated by the United States Supreme Court.

7. Within the time prescribed by the rules, two extensions of time within which to file and settle the bill of exceptions on appeal were filed for and in behalf of your petitioner by his then attorney, Alfred A. May, the last of which extended said time to January 20, 1941.

8. Within the same time a notice and grounds of appeal to this Honorable Court was filed for and in behalf of two co-defendants, to-wit: Harry Braverman and Allen Wainer, by their counsel, Donald B. Frederick of Detroit, Michigan, the same being cause number 8714 in this Honorable Court.

9. Your petitioner and appellant is informed and verily believes the fact to be that the bill of exceptions for and in behalf of the said co-defendants, Harry Braverman and Allen Wainer, has been prepared and is ready for printing, and that their counsel, Donald B. Frederick, obtained an additional extension of time from January 20, 1941 to and including the 6th day of March, 1941 within which to file the same, pursuant to an order duly entered by this Honorable Court.

10. Your petitioner and appellant herein has but recently learned that no steps were taken by his counsel, Alfred A. May, to prepare and settle the bill of exceptions for and in his behalf upon his said appeal, and that no extension of time within which to do the same has been procured by him from the said date of January 20, 1941, and that by virtue thereof this Honorable Court has lost jurisdiction of your petitioner and appellant's cause.

11. That unless your petitioner and appellant herein is permitted to have his contentions heard by this Honorable Court and there adjudicated, he will be denied his rights through no fault, error or neglect upon his own part.

12. Your petitioner and appellant herein is informed and verily believes the fact to be that the bill of exceptions and record on appeal as prepared for and in behalf of the said [fol. 649] co-defendants, Harry Braverman and Allen Wainer, contains all facts and matters which occurred upon the trial of the cause, insofar as they are material to a determination of your petitioner and appellant's rights upon his appeal, and that this said record may be used in consideration of the claims of your said petitioner and appellant on his appeal.

13. Your petitioner and appellant further alleges that the aforesaid information has but recently come to his attention through certain of his friends and relatives, and that upon learning that his rights upon appeal had not been protected and that no steps had been taken by his former counsel to file and settle the bill of exceptions or record on appeal, they, his said friends, communicated with and retained the services of his present counsel, Donald B. Frederick, but four days ago.

14. That a substitution of attorneys, whereby your petitioner and appellant's former counsel, Alfred A. May, is

substituted by his present counsel, Donald B. Frederick, has been obtained and duly filed in this Court and cause.

15. That your petitioner and appellant's present counsel, Donald B. Frederick, represents your petitioner and appellant herein for the purpose of this motion and to argue his cause upon the appeal when heard before this Honorable Court, if permitted so to do.

16. The present counsel for your petitioner and appellant herein verily believes that the rights of the petitioner and appellant herein can be determined from the record as prepared and filed in the appeal now pending in behalf of the said co-defendants, Harry Braverman and Allen Wainer.

Wherefore, it is respectfully prayed that an order may be entered by this Honorable Court extending the time within which the petitioner and appellant herein may file and settle his bill of exceptions to and including March 6, 1941, the same being entered nunc pro tunc as of January 20, 1941, and that the printed record as filed in cause number 8714, to-wit: the appeal of Harry Braverman and Allen [fol. 650] Wainer be used in determining the rights of your petitioner and appellant herein.

(Signed) Donald B. Frederick, Attorney for Petitioner and Appellant.

Business Address: 1114-1118 Buhl Building, Detroit, Michigan.

Dated: February 27, A. D. 1941.

STATE OF MICHIGAN,
County of Wayne—ss:

Donald B. Frederick, who after being first duly sworn, deposes and says that he is a practicing attorney with offices at 1114 Buhl Building, in the City of Detroit, State of Michigan, and that he has read the foregoing motion by him subscribed, that he knows the contents thereof, and that the allegations therein contained are true, except as to such statements as are alleged to be based upon information and belief, and that he verily believes them to be true.

Your deponent further alleges that he is at the present time counsel for one Harry Braverman and Allen Wainer, both of whom have taken appeals from a judgment of con-

viction in the United States District Court for the Eastern District of Michigan, the same being cause number 8714 in this Honorable Court, and that they were co-defendants with the petitioner and appellant herein upon the trial of the cause.

Your affiant further alleges that he has prepared the bill of exceptions in the said cause number 8714 and that the matters therein contained set forth a true and correct record of the proceedings that occurred upon the trial of this cause, and that the said transcript contains all matter material to a determination of the rights of appellant herein; that an additional record on appeal is not only unnecessary to a determination of the claims of the petitioner and appellant in this cause, but would merely encumber the record.

[fol. 651] Your deponent further sets forth that he was but recently, to-wit: four days ago, contacted by said friends of Morris Frank, the petitioner and appellant herein, who requested that he represent the said petitioner and appellant, Morris Frank, and seek an adjudication of his rights on appeal.

Further deponent saith not.

(Signed) Donald B. Frederick.

Subscribed and sworn to before me, this 27th day of February, A. D. 1941. (Signed) Evelyn Shamie, Notary Public, Wayne County, Michigan. My commission expires: May 18, 1943.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION TO EXTEND TIME FOR FILING AND SETTLING BILL OF EXCEPTIONS—Filed March 6, 1941

Before Hicks, Allen and Hamilton, JJ.

It is ordered that the time for filing and settling bill of exceptions in the District Court be extended to and including March 6th, 1941, pursuant to motion of appellant.

Approved for entry:

Xen Hicks, Circuit Judge.

A true copy:

Attest: J. W. Menzies, Clerk, U. S. C. C. A., Sixth Circuit.

[fol. 652] IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed March 5, 1941

Now come the defendants, Harry Braverman and Allen Wainer, by and through their attorneys Donald B. Frederick and John E. Dougherty, and in connection with their notice of appeal make the following assignments of error, which they allege occurred upon the trial of the cause and upon which they will rely in the prosecutions of the appeal heretofore taken from the sentence of the Court entered on the 17th day of June, A. D. 1940.

I

That the court erred in overruling the defendants' motion for a directed verdict of not guilty made at the conclusion of the Government's case.

II

That the court erred in overruling the defendants' motion for a directed verdict of not guilty made at the conclusion of the Government's case and which required that the Government either elect upon which count of the indictment they desired to have the case submitted to the jury, or the court to direct the jury to find the defendants not guilty as to those counts where there was no evidence that either proved or tended to prove their participation in the conspiracy charged.

III

That the court erred in overruling the defendants' motion for a directed verdict of not guilty made at the conclusion of the Government's case, wherein it was urged that the Statute of Limitations had run as to the defendants and appellants herein.

IV

That the court erred in overruling the defendants' motion for a directed verdict of not guilty made at the [fol. 653] conclusion of the Government's case and which urged that the testimony as presented showed but one conspiracy, and that other than the conspiracies charged in this indictment.

V

That the court erred in overruling the defendants' motion for a directed verdict of not guilty made at the conclusion of all the evidence in the case.

VI

That the court erred in denying defendants' motion requiring the Government to elect upon which count of the indictment the cause should be submitted to the jury.

VII

That the court erred in denying the defendants' motion made during the progress of the trial and at the termination thereof requesting that the Government elect the count upon which the case should be submitted to the jury.

VIII

That the court erred in permitting testimony to be introduced upon the trial of the cause relative to the so-called Romulus still.

IX

That the court erred in admitting into evidence Government's Exhibits 3 and 5.

X

That the court erred in admitting into evidence Government's Exhibits 16 through 58, inclusive.

XI

That the court erred in admitting into evidence Government's Exhibit 59 through 65, inclusive.

{fol. 654}

XII

That the court erred in refusing to compel the Government to produce original statements made to officers of the Alcohol Tax Unit at the time of their arrest by witnesses who testified in behalf of the Government upon the trial of the cause.

XIII

That the court erred in permitting witnesses to testify relative to the contents of documents which were not introduced upon the trial of the cause.

XIV

That the court erred in permitting testimony relative to acts, conduct and conversations had between certain of the co-conspirators and/or co-defendants prior to the time set forth in the indictment as filed.

XV.

That the court erred in allowing testimony to be introduced relating to acts, conduct, and/or conversations by co-conspirators and/or co-defendants not made in the presence of the defendants upon trial.

XVI

That the court erred in allowing testimony to be introduced relating to acts, conduct, and/or conversations of co-defendants and/or co-conspirators made subsequent to their arrest by officers of the Alcohol Tax Unit, Bureau of Internal Revenue.

XVII

That the court erred in admitting in evidence testimony relating to acts, conduct and/or conversations of co-defendants and/or co-conspirators subsequent to the time charged in the indictment.

[fol. 655]

XVIII

That the court erred in permitting the jury to consider testimony pertaining to acts, conduct, and/or conversations of co-conspirators and/or co-defendants made subsequent to the time of the withdrawal of the defendants herein from the conspiracy charged.

XIX

That the court erred in admitting into evidence Government's Exhibits 67 through 73, inclusive.

XX

That the court erred in admitting into evidence Government's Exhibits 77 through 88, inclusive.

XXI

That the court erred in admitting into evidence Government's Exhibits 89 through 97, inclusive.

XXII

That the court erred in permitting witnesses to testify relative to the writing which appeared upon certain papers, boxes and portions of boxes which were not introduced into evidence.

XXIII

That the court erred in receiving in evidence Government's Exhibits 165 through 169, inclusive.

XXIV

That the court erred in receiving in evidence Government's Exhibits 189 and 190.

XXV

That the court erred in receiving in evidence Government's Exhibits 14 through 57, inclusive.

[fol. 656]

XXVI

That the court erred in receiving in evidence Government's Exhibits 176 through 188, inclusive.

XXVII

That the court erred in receiving in evidence Government's Exhibits 59 through 62, inclusive.

XXVIII

That the court erred in receiving in evidence Government's Exhibits 7 through 13, inclusive.

XXIX

That the court erred in permitting testimony to be introduced relative to a conversation had between a co-conspirator and co-defendant, herein, and a certain unidentified employee of the Western Union Telegraph Company relative to the contents of a telegram which was not introduced in evidence.

XXX

That the court erred in receiving in evidence Government's Exhibits 195 and 196, 195A and 196A.

XXXI

That the court erred in allowing testimony to explain the meaning of words used in certain telegrams introduced into evidence.

XXXII

That the court erred in receiving in evidence Government's Exhibits 198 through 207, inclusive, and 198A through 207A, inclusive.

XXXIII

That the court erred in refusing to give the defendants' request to charge number 1.

[fol. 657]

XXXIV

That the court erred in refusing to give the defendants' request to charge number 2.

XXXV

That the court erred in refusing to give the defendants' request to charge number 3.

XXXVI

That the court erred in refusing to give the defendants' request to charge number 4.

XXXVII

That the court erred in refusing to give the defendants' request to charge number 5.

XXXVIII

That the court erred in refusing to give the defendants' request to charge number 6.

XXXIX

That the court erred in refusing to give the defendants' request to charge number 7.

XXXX

That the court erred in refusing to give the defendants' request to charge number 8.

XXXXI

That the court erred in refusing to give the defendants' request to charge number 9.

XXXXII

That the court erred in refusing to give the defendants' request to charge number 10.

[fol. 658]

XXXXIII

That the court erred in refusing to give the defendants' request to charge number 11.

XXXXIV

That the court erred in refusing to give the defendants' request to charge number 12.

XXXXV

That the court erred in refusing to give the defendants' request to charge number 13.

XXXXVI

That the court erred in refusing to give the defendants' request to charge number 14.

XXXXVII

That the court erred in refusing to give the defendants' request to charge number 15.

XXXXVIII

That the court erred in refusing to give the defendants' request to charge number 16.

XXXXIX

That the court erred in refusing to give the defendants' request to charge number 17.

L

That the court erred in imposing a general sentence of eight years imprisonment and a fine to Two Thousand Dollars (\$2,000.00).

[fol. 659] Wherefore, the defendants pray that the said sentence against them under the indictment herein may be reversed and held for naught.

(Signed) Donald B. Frederick, John E. Dougherty,
Attorneys for Defendants, Harry Braverman and
Allen Gainer.

Dated: Detroit, Michigan, March 5, A. D. 1941.

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME IN WHICH TO FILE AND SETTLE THE
BILL OF EXCEPTIONS TO AUGUST 20, 1940—Filed July 11,
1940

At a session of said Court, held in the Federal Building,
at Detroit, Michigan, on the 11th day of July, A. D. 1940.

Present: Hon. Edward J. Moinet, District Judge.

Upon reading and filing the stipulation of the parties
hereto, signed by their respective counsel, and the Court
having been advised in the premises, and it appearing
that the time for filing and settling the Bill of Exceptions
in the above entitled cause has not expired;

Now, therefore, it is hereby ordered that the time for
filing and settling the Bill of Exceptions in the above
entitled cause be and the same is hereby extended to and
including the 20th day of August, A. D. 1940.

Edward J. Moinet, District Judge.

[fol. 660] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME IN WHICH TO FILE AND SETTLE THE
BILL OF EXCEPTIONS TO JANUARY 20, 1941—Filed October
17, 1940

Before: Hicks and Simons, JJ.

It is ordered that the time for filing and settling bill
of exceptions in the District Court be extended to and

including January 20, 1941, pursuant to motion of appellant.

Approved for entry:

Xen Hicks, Circuit Judge.

A true copy:

Attest: J. W. Menzies, Clerk, U. S. C. C. A. 6th Cir.

[fol. 661] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME IN WHICH TO FILE AND SETTLE THE
BILL OF EXCEPTIONS TO MARCH 6, 1941—Filed January
17, 1941

In the United States Circuit Court of Appeals, this
day of January, A. D. 1941.

Present: Hon. Charles C. Simons, Presiding Judge.

Upon reading and filing the stipulation of the parties hereto, signed by their respective counsel, and the Court having been advised in the premises, and it appearing that the time for filing and settling the Bill of Exceptions in the above entitled cause has not expired;

Now, therefore, it is hereby ordered that the time for filing and settling the Bill of Exceptions in the above entitled cause be and the same is hereby extended to and including the 6th day of March, A. D. 1941.

Charles C. Simons, Presiding Judge.

A true copy:

Attest: J. W. Menzies, Clerk, U. S. C. C. A., 6th Cir.

[fol. 662] IN UNITED STATES DISTRICT COURT

STIPULATION RE EXHIBITS AND RECORD—Filed March 15,
1941

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the entire record on appeal as stipulated in the designation of contents of record on appeal be printed, except Govern-

ment's Exhibits 1, 2, 3, 4, 5, 6, 7, 14, 62, 63, 87, 91, 100, 106, 125, 125A, 126, 127, 147, 156, 160, 174, 176, 191, 195, 195A and 211, which are attached to and made a part of the bill of exceptions as settled and filed.

It is further stipulated and agreed that the foregoing said exhibits may be withdrawn from the said bill of exceptions as heretofore settled and filed in the United States District Court for the Eastern District of Michigan, and that at the time this cause is brought on for argument before this Honorable Court the Government will produce as a part of the record the said aforementioned exhibits for use in determination of this cause.

It is further stipulated and agreed that Government's Exhibits 7, 14, 62, 63, 87, 91, 127, 174, 176, 191, 195 and 195A represent one of a series of like exhibits which were introduced upon the trial of the cause, except for different dates appearing thereon.

Donald B. Frederick, Attorney for Appellants.

Louis M. Hopping, Attorney for Appellee.

Dated: Detroit, Michigan, March 14, A. D. 1941.

[fol. 663] IN UNITED STATES DISTRICT COURT

STIPULATION RE EXHIBITS AND RECORD—Filed March 6, 1941

It is hereby stipulated and agreed by and between the United States of America, plaintiff herein, and Morris Frank, defendant, by and through their respective counsel, that inasmuch as appeal has been duly filed for and in behalf of the defendant herein, and a Bill of Exceptions and Assignments of Errors for and in behalf of Harry Braverman and Allen Wainer, co-defendants and appellants herein, have timely been filed in this Court and cause, and inasmuch as the said Bill of Exceptions and Assignments of Errors so filed for and in behalf of the said co-defendants and appellants, Harry Braverman and Allen Wainer, present a summary of the testimony and questions to be raised upon the appeal of the said defendant, Morris Frank.

Now, therefore, it is hereby stipulated and agreed that the Bill of Exceptions and Assignments of Errors as filed

for and in behalf of Harry Braverman and Allen Wainer may be used in determining the rights of the said defendant, Morris Frank, upon his appeal.

Louis M. Hopping, Attorney for Plaintiff.
Donald B. Frederick, Attorney for Defendant.

Dated: Detroit, Michigan, March 6, A. D. 1941.

[fol. 664] IN UNITED STATES DISTRICT COURT

STIPULATION RE COMPARISON OF RECORD—Filed April 16,
1941

It is hereby stipulated by and between the attorneys for the respective parties hereto that the Record on Appeal as printed be certified and transmitted by the Clerk of the United States District Court for the Eastern District of Michigan to the United States Circuit Court of Appeals for the Sixth Circuit without comparison.

Donald B. Frederick, John E. Dougherty, Attorneys
for Appellants.

Louis M. Hopping, Attorney for Appellee.

Dated at Detroit, Michigan, this 25th day of March, 1941.

IN UNITED STATES DISTRICT COURT

STIPULATION DESIGNATING CONTENTS OF RECORD ON APPEAL—
Filed April 16, 1941

It is hereby stipulated by and between the United States of America and Harry Braverman, Allen Wainer and Morris Frank, defendants herein, by their respective attorneys, that the following papers and documents be designated as the contents of the record on appeal to the United States Circuit Court of Appeals for the Sixth Judicial Circuit.

1. Indictment.
2. Plea of Harry Braverman.
3. Plea of Allen Wainer.

[fol. 665] 4. Plea of Morris Frank.

5. Final Recognizance of Harry Braverman.

6. Final Recognizance of Allen Wainer.
7. Final Recognizance of Morris Frank.
8. Defendant Braverman's Request to Charge.
9. Verdict of the Jury.
10. Sentence of the Court as to Harry Braverman.
11. Sentence of the Court as to Allen Wainer.
12. Sentence of the Court as to Morris Frank.
13. Supersedeas Bond of Harry Braverman.
14. Supersedeas Bond of Allen Wainer.
15. Notice of Election to Enter Upon Service of Sentence of Morris Frank.
16. Notice and Grounds of Appeal of Harry Braverman and Allen Wainer.
17. Notice and Grounds of Appeal of Morris Frank.
18. Bill of Exceptions (Narrative Statement of Testimony, Motion to Dismiss, Motions for Directed Verdict, Motions to Elect, Charge of the Court, and Certificate of Court).
19. Substitution of Attorneys in Behalf of Morris Frank.
20. Motion for Order Nunc Pro Tunc Extending the time in Which to File and Settle Bill of Exceptions in Behalf of Morris Frank.
21. Order Granting Motion to Extend Time in Which to File and Settle Bill of Exceptions in Behalf of Morris Frank.
22. Assignments of Errors.
- [fol. 666] 23. Orders Extending Time in Which to File and Settle Bill of Exceptions.
24. Stipulation Re Exhibits and Record and Authorizing Withdrawal of Exhibits from Bill of Exceptions as Filed in the District Court.
25. Order Authorizing Withdrawal of Exhibits from Bill of Exceptions.
26. Stipulation Consolidating Bill of Exceptions and Assignments of Errors.
27. Stipulation Re Comparison of Record.
28. Stipulation Designating Contents of Record on Appeal.

Donald B. Frederick, John E. Dougherty, Attorneys
for Appellants.

Louis M. Hopping, Attorney for Appellee.

Dated: Detroit, Michigan, March 25, A. D. 1941.

[fol. 667] IN UNITED STATES DISTRICT COURT

ORDER AUTHORIZING WITHDRAWAL OF EXHIBITS FROM BILL
OF EXCEPTIONS

(Entered Circuit Court of Appeals—April 11, 1941)

(Honorable Xenophon Hicks, Circuit Judge)

Pursuant to motion and stipulation of counsel, it is ordered that the printing of Government's exhibits 1, 2, 3, 4, 5, 6, 7, 14, 62, 63, 87, 91, 100, 106, 125, 125A, 126, 127, 147, 156, 160, 174, 176, 191, 195, 195A and 211 be dispensed with and that these exhibits be treated in the nature of physical exhibits.

[fols. 668-688] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME IN WHICH TO FILE AND SETTLE THE
BILL OF EXCEPTIONS TO MAY 16, 1941—Filed April 10, 1941

Before: Hicks and Martin, JJ.

It is ordered that the time for filing record on appeal be extended for a period of thirty days from this date, pursuant to stipulation of counsel.

Approved:

Xen Hicks, Circuit Judge.

[fol. 689] IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CAUSES ARGUED AND SUBMITTED

(December 6, 1941—Before: Simons, Allen and Martin, JJ.)

These causes are argued by Donald B. Frederick, Robert N. Gorman and John E. Dougherty for Appellants and by Louis M. Hopping for Appellee and are submitted to the court. It was stated that No. 8716 would be dismissed on stipulation.

607

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—Entered January 14, 1942

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

[fol. 690] IN UNITED STATES CIRCUIT COURT OF APPEALS

OPINION—Filed January 14, 1942

Before Simons, Allen and Martin, Circuit Judges

Martin, Circuit Judge. The three appellants were indicted with numerous others upon seven counts of a single indictment, each count charging conspiracy to violate a separate and distinct internal revenue liquor law of the United States. The seven counts respectively charged appellants with conspiracy, in violation of section 37 of the Criminal Code, U. S. C. A., Title 18, section 88, (1) unlawfully to *carry on the business of wholesale and retail liquor dealers without having the special occupational tax stamps as required by law*; (2) unlawfully to *possess* distilled spirits, the immediate containers thereof not having affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits; (3) unlawfully to *transport* large quantities of distilled spirits, the immediate containers not having affixed thereto the required stamps; (4) unlawfully to *carry on the business of distillers* without having given bond as required by law; (5) unlawfully to remove, deposit and *conceal* distilled spirits, in respect whereof a tax was imposed by law; (6) unlawfully to *set up and possess unregistered stills and distilling apparatus*; and (7) unlawfully to make and *ferment mash* fit for distillation, on unauthorized premises.

The jury found the three appellants and another defendant, Harry Klein, "guilty as charged," and failed to agree upon a verdict as to two other defendants. Each of the appellants was sentenced to eight years' imprisonment and fined two thousand dollars.

(1) Appellants urge that under no view of the evidence was there presented more than one conspiracy and that there was a fatal variance between the indictment and the proof.

The indictment was drawn in manifest conformity to our holding in *Fleisher v. United States*, 91 F. (2d) 404, where judgment of conviction was upheld on four conspiracy counts each charging the violation of a distinct internal [Vol. 691] revenue liquor law of the United States. We rejected the contention that the indictment charged only one continuing conspiracy, consisting of one crime only, for which there could be but one punishment. Applying the principle of *Blockburger v. United States*, 284 U. S. 299, 304, that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not; we found that certain entirely distinct elements were required to establish the conspiracy described in each count of the indictment and accordingly that four distinct offenses were charged.

See also an earlier decision of this court, *Parmenter v. United States*, 2 F. (2d) 945, 946. Compare *Leonard v. United States*, 18 F. (2d) 208, 213.

In *Telman v. United States*, 67 F. (2d) 716 (C. A. A. 10), a judgment of conviction on eight counts of conspiracies to violate various provisions of the National Prohibition Act was upheld. In the Ninth Circuit, conspiracy to bring aliens into this country and conspiracy to conceal them, after they had landed, have been held to constitute separate offenses, despite the fact that some of the overt acts were in execution of both conspiracies. *Fenkichi Ito v. United States*, 64 F. (2d) 73, 77 (C. C. A. 9).

Mr. Justice Brandeis in *Albrecht v. United States*, 273 U. S. 1, 11, with characteristic clarity, said: "One may obviously possess without selling; and one may sell and cause to be delivered a thing of which he has never had possession; or one may have possession and later sell as

appears to have been done in this case. The fact that the person sells the liquor which he possessed does not render the possession and the sale necessarily a single offense. There is nothing in the constitution which prevents Congress from punishing separately each step leading to the consummation of a transaction which it has power to prohibit and punishing also the completed transaction."

[fol. 692] In *Meyers v. United States*, 94 F. (2d) 433 (C. C. A. 6); the doctrine of *Fleisher v. United States*, *supra*, was applied in the affirmance of the conviction of a defendant upon two counts, each charging conspiracy to violate a separate and distinct internal revenue liquor law of the United States.

In the *Fleisher* case, there being no bill of exceptions, we assumed, in view of the jury verdict of guilty on all four counts, that evidence was offered showing the existence of four separate conspiracies. In the instant case, there is a lengthy bill of exceptions, setting forth a mass of evidence. This evidence has been considered in the light of settled principles.

Under the statute, the gist of the offense of conspiracy is an unlawful combination which must be proven against all members of the conspiracy, each one of whom is then held responsible for the acts of all; but it is not required that an overt act be proven against each member of the conspiracy. *Bannon v. United States*, 156 U. S. 464, 468, 469.

There have been numerous decisions of this court to the effect that existence of a conspiracy may be established by inferences from circumstantial evidence.

Johnson v. United States, 82 F. (2d) 500, 504.

Susnjar v. United States, 27 F. (2d) 223.

Zottarelli v. United States, 20 F. (2d) 795, 798.

Williams v. United States, 3 F. (2d) 933.

Israel v. United States, 3 F. (2d) 743.

Remus v. United States, 291 Fed. 501.

Windsor v. United States, 286 Fed. 51.

Davidson v. United States, 274 Fed. 285, 287.

As was said in the last cited case: "A charge of conspiracy is one that is not easily susceptible of direct proof, nor is it essential to establish conspiracy that actual proof be offered of a definite plan or agreement entered into

by conspirators. It is sufficient if the evidence shows such a concert of action in the commission of the unlawful act, or such other facts and circumstances upon which the [fol. 693] natural inference arises, that the unlawful, overt act was in furtherance of a common design, intent, and purpose of the alleged conspirators to commit the same."

We repeat what was said in *Meyers v. United States*, 94 F. (2d) 433, 434 (C. A. A. 6), *supra*: "The jury having found guilt, slight evidence connecting a defendant with a conspiracy may be substantial and, if it is, is sufficient."

Not only may actual conspiracy be proved by circumstantial evidence, but it is not even necessary to support conviction that it be shown that a conspirator had knowledge of the entire membership of the conspiracy.

Zottarelli v. United States, 20 F. (2d) 795, 798 (C. C. A. 6).

Jezewski v. United States, 13 F. (2d) 599 (C. A. A. 6).

It is the law of this circuit that where the evidence shows a continuing conspiracy for the illegal purchase and sale of liquor, persons who, with knowledge of the conspiracy, contribute to its effectuation by knowingly selling liquor to the initial conspirators, though at different times and without knowledge of each other, become parties to the conspiracy.

Radner v. United States, 281 Fed. 516, 519, 520 (C. C. A. 6).

There is no required limitation upon the crime of conspiracy that each conspirator shall participate in or have knowledge of all the operations of the conspiracy. A conspirator may join at any point in the progress of the conspiracy and be held responsible for all that may be or has been done.

United States v. Manton, 107 F. (2d) 834, 848 (C. C. A. 2).

Allen v. United States, 4 F. (2d) 688, 692 (C. C. A. 4).

Baker v. United States, 21 F. (2d) 903, 905 (C. C. A. 4).

[fol. 694] Judge Knappen said in *Zottarelli v. United States*, 20 F. (2d) 795, 796 (C. C. A. 6): "Under settled

rules, we must take that view of the evidence, and the inferences reasonably and justifiably to be drawn therefrom, most favorable to the government, and determine therefrom whether verdict against the defendants might lawfully be rendered, and if there was substantial and competent evidence, which, if believed, would support conviction, the refusal to dismiss must be sustained. We cannot weigh the evidence or determine the credibility of witnesses." Citing, *Burton v. United States*, 202 U. S. 344, 373; *Kelly v. United States*, 258 Fed. 392, 406. See also *Abrams v. United States*, 250 U. S. 616, 619.

The rule of our circuit and others was clearly stated and approved by Mr. Justice Sutherland, retired, with whom sat the present Chief Justice and Circuit Judge Clark in *United States v. Manton*, 107 F. (2d) 834, 839: "It is not necessary that the participation of the accused should be shown by direct evidence. The connection may be inferred from such facts and circumstances in evidence as legitimately tend to sustain that inference. Indeed, often if not generally, direct proof of a criminal conspiracy is not available and it will be disclosed only by a development and collocation of circumstances. In passing upon the sufficiency of the proof, it is not our province to weigh the evidence or to determine the credibility of witnesses. We must take that view of the evidence most favorable to the government and sustain the verdict of the jury if there be substantial evidence to support it. *Hodge v. United States*, 6 Cir., 13, F. (2d) 596; *Fitzgerald v. United States*, 6 Cir., 29 F. (2d) 881."

An elaborate review of the facts of this case seems unnecessary. Upon the principles of law which have been adduced, we find that the record reveals sufficient substantial evidence to justify the verdict of the jury convicting the three appellants upon all seven counts of the indictment, each of which embraces an added element of criminality not contained in any other law. The conspiracies laid in each count are therefore separate and distinct crimes, separately punishable. The proof of overt acts [fol. 695] by the conspirators, including appellants in furtherance of each distinct conspiracy was abundant. The fact that the conspiracy was also a general one to violate all laws repressive of its consummation does not gain-say the separate identity of each of the seven conspiracies. From the evidence may be readily deduced a common design

of appellants and others, followed by concerted action, to ship disguised contraband liquor from Chicago to eastern Michigan, to make mash, to set up stills, to operate illicit distilleries, to conceal the stillrun product in warehouses apart from the distilleries, to possess and also to transport the liquor in unstamped containers, and to operate both a wholesale and a retail liquor business without giving bond as required by law or having the required excise tax stamps.

Two of the conspirators, Henry Skampo and Clarence Dracka, pleaded guilty to the charges in the indictment and testified against appellants and other defendants. Harry Klein, an important cog in the wheels of the conspiracy, was convicted along with appellants and has abandoned his appeal. Many other defendants pleaded guilty.

In the fall of 1935, Klein introduced Skampo, a partner of Dracka in the unlawful liquor business, to appellant Braverman and arrangements for shipments of contraband liquor were made. Braverman became interested financially with Skampo and Dracka in an illicit distillery. Braverman made numerous shipments of untaxpaid liquor from Chicago to Detroit under false labels and billing. Fictitious names of both consignors and consignees were used. Skampo paid Braverman for the various shipments by exhibited money orders.

In the spring of 1936, Braverman ceased shipping and was succeeded in this feature of the enterprise by appellant Wainer, who admitted that he had previously been a partner of Braverman in unlawful liquor business. Before Braverman withdrew from the conspiracy if it be conceded that he did withdraw, he had conspired in all respects charged in the seven counts of the indictment.

[fol. 696] Skampo testified: "Mr. Wainer said he understood we had been getting some alcohol and that we could not get any now; if he could secure some and forward it to us, could we handle it. We [Dracka and the witness] told him we could. . . . We received the shipments from Al Wainer for a period of two or three months as I recall. That was in the spring of 1936." Wainer displayed entire familiarity with the manner in which Braverman had conducted the business and delivered the goods, and pursued the same course. When Wainer ran out of alcohol, Klein, who had originally tied Skampo in with Braverman, supplied Skampo and Dracka with liquor temporarily.

When Wainer personally ceased supplying Skampo and Dracka, he aided arrangements for the continued unlawful use of the same warehouse by these confessed conspirators and told them that they could have the tools located there. The partners rented the same warehouse space which had been used by Wainer and, at the request of the warehouseman Stevens, cleared up back rent.

Then entered appellant, Morris Frank, as the illicit liquor provender to Skampo and Dracka. Appellant Wainer admitted that he had met Morris Frank as far back as 1932 and had probably had "some business conversation" with him. Dracka and Skampo both testified to their transactions with Frank, who undertook to, and did supply them with illicit liquor at the same warehouse. They paid Frank directly for some fifteen or twenty such deliveries. There appears no differentiating feature in the manner in which Frank joined in the conspiracy which renders him less comprehensively culpable than the other conspirators. Indeed, Frank was quite active. Dracka testified, "After we got better acquainted, Mr. Frank brought the car and the alcohol into the warehouse himself. He usually helped me set the stuff on the elevator." It is manifest that he became a full fledged member of the conspiracies to violate the seven substantive internal-revenue liquor laws and was properly convicted on all counts.

[fols. 697-698] On the facts, we find the language of the concluding paragraph in *United States v. Falcone*, 311 U. S. 205, 211, inapplicable to the situation of appellant Frank in the instant case. The reasonable deduction from the evidence before us is that appellant Frank was fully cognizant of the widespread, comprehensive conspiracy.

(2) There is no merit in appellants' contention that the prosecutions were barred by the statute of limitations. The indictment was returned December 19, 1939; the earliest date upon which the conspiracy was charged to have been concocted was November 1, 1935.

In our judgment, a conspiracy continues, insofar as the statute of limitations is concerned, so long as there is a course of conduct in violation of law to effectuate its purpose.

Ryan v. United States, 216 Fed. 13 (C. C. A. 7).

Eldredge v. United States, 62 F. (2d) 449 (C. C. A. 10).

But in any interpretative aspect, the statute of limitations raises no bar to the prosecution of the instant case. The limitation period is by the plain language of the statute *six years*, and *not three years* as appellants insist. 26 U. S. C. A., section 3748 a(3) unequivocally provides: "For offenses arising under Section 37 of the Criminal Code, March 4, 1909, 35 Stat. 1096 (U. S. C., Title 18, Sec. 88), where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years." This section of the statute of limitations is thus, ~~in~~ terms, directly applicable to each of the seven counts.

There being no reversible error found in the record, the judgment of the district court on the verdict of the jury is affirmed as to all appellants.

[fols. 699-702] IN THE UNITED STATES CIRCUIT COURT OF
APPEALS

[Title omitted]

Petition for rehearing on behalf of Allen Wainer covering 4 pages, filed Feb. 6, 1942. Omitted from this print. It was denied, and nothing more by order of Feb. 10, 1942.

[fols. 703-704] IN UNITED STATES COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING ON BEHALF OF
ALLEN WAINER—Entered February 10, 1942

The petition for rehearing is denied.

[fols. 705-722] IN THE UNITED STATES CIRCUIT COURT OF
APPEALS

[Title omitted]

Petition for rehearing on behalf of Harry Braverman covering 18 pages, filed Feb. 11, 1942. Omitted from this print. It was denied, and nothing more by order of March 2, 1942.

[fol. 723] IN UNITED STATES CIRCUIT COURT OF APPEALS
ORDER DENYING PETITION FOR REHEARING ON BEHALF OF
HARRY BRAVERMAN—Entered March 2, 1942

The petition for rehearing is denied.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 724] SUPREME COURT OF THE UNITED STATES

No. 43, October Term, 1942

ORDER ALLOWING CERTIORARI—Filed April 14, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 725] SUPREME COURT OF THE UNITED STATES

No. 44, October Term, 1942

ORDER ALLOWING CERTIORARI—Filed April 14, 1942

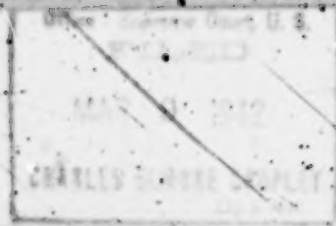
The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 46,355, 46,356. U. S. Circuit Court of Appeals, Sixth Circuit. Enter James J. Magner. Term No. 43. Harry Braverman, Petitioner, vs. The United States of America. Enter John E. Dougherty. Term No. 44. Allen Wainer, Petitioner, vs. The United States of America. Petitions for writs of certiorari and exhibit thereto. Filed March 9, 1942. Term No. 43 O. T. 1942. Term No. 44 O. T. 1942.



FILE COPY



IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No.

1027 43

HARRY BRAVERMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION OF HARRY BRAVERMAN FOR WRIT OF
CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SIXTH CIRCUIT.**

PRESTON BOYDEN,

134 South La Salle Street,
Chicago, Illinois,

Attorney for Petitioner.

JAMES J. MAGNER,

Of Counsel.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No. _____

HARRY BRAVERMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT.**

*To the Honorable, the Chief Justice of the United States,
and the Associate Justices of the Supreme Court of the
United States:*

Harry Braverman, by Preston Boyden, his attorney, prays that this Court issue a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit, entered in the above-entitled cause on January 14, 1942 (R. 689), affirming a judgment of the United States District Court for the Eastern District of Michigan, Southern Division.

OPINION BELOW.

The opinion of the United States Circuit Court of Appeals for the Sixth Circuit (R. 690) has not been reported.

JURISDICTION.

The jurisdiction of this court is invoked under Judicial Code, § 246a, 28 U. S. C. A., § 347(a).

The judgment of the Circuit Court of Appeals for the Sixth Circuit sought to be reviewed was entered on January 14, 1942 (R. 689).

Petitioner's application for a rehearing was denied on March 2, 1942 (R. 723).

QUESTION PRESENTED.

The question presented is whether (without violating the provisions of the Fifth Amendment to the Constitution of the United States) an offense which is conceded by the Government to have been in fact *one* continuous conspiracy, but having differing purposes, can, as a matter of law, be arbitrarily "split" according to the number of its alleged purposes and severed into separate conspiracies for the purpose of inflicting punishment.

SUMMARY STATEMENT OF MATTER INVOLVED.

The indictment in this case charges the petitioner Braverman; and others, with having participated in a conspiracy in violation of Section 37 of the Criminal Code (18 U. S. C. A. 88). The indictment is divided into seven counts (R. 1-26). The averments of each count are alike as to time, place, origin and duration of the conspiracy (R. 1-26). Each count, however, charges as an *objective* of the conspiracy the violation of a separate statute, viz.: (1) unlawfully to carry on the business of wholesale and retail liquor dealers without having the special occupational tax stamps as required by law; (2) unlawfully to possess distilled spirits, the immediate containers thereof not having affixed thereto stamps denoting the quantity of distilled spirits

contained therein and evidencing payment of all Internal Revenue taxes imposed on such spirits; (3) unlawfully to transport large quantities of distilled spirits, the immediate containers not having affixed thereto the required stamps; (4) unlawfully to carry on the business of distillers without having given bond as required by law; (5) unlawfully to remove, deposit and conceal distilled spirits in respect whereof a tax was imposed by law; (6) unlawfully to set up and possess *unregistered stills and distilling apparatus*; and (7) unlawfully to make and ferment mash fit for distillation on unauthorized premises (R. 1-26).

When the case was tried the prosecutor and the trial judge treated the indictment as charging *one continuous conspiracy* having seven different objects. It was submitted to the jury on that theory of the case.* The court declined to charge the jury on the theory of seven separate agreements or conspiracies. (R. 35-42).

Some defendants pleaded guilty and testified for the

* "The Government claims in this case that this was a continuing conspiracy. It started back at the time alleged in the indictment and continued down for several years."—(Charge to jury; R. 626.) (See also, R. 639, 641.)

The Court: Well, let's settle that. That is an extravagant statement. You claim there are seven conspiracies?

Mr. Frederick (Petitioner's counsel): Set up in seven separate counts. Each count sets up a conspiracy, yes, your Honor, seven counts. Each count sets up a conspiracy.

The Court (To the District Attorney): Is that right?

Mr. Hopping (Assistant District Attorney): I would not say that that was, your Honor. It is one count—

The Court: Well, never mind.

Mr. Hopping: One conspiracy indictment and seven counts charging seven illegal objects of the conspiracy.—(Colloquy between court and counsel, R. 275.)

The Court: * * * Now, do I understand that each separate conspiracy has reference, first, to manufacture, to transportation, to failure to pay tax, and others?

Mr. Hopping: Yes, your Honor, those are the separate illegal objects, alleged as to the objects of this conspiracy.

The Court: I want to hear you on the law as to what right you have to separate all of these, when, as a matter of fact, in my judgment, you call it *one conspiracy*. (Italics ours.) (R. 468.)

Mr. Hopping (Assistant District Attorney): The conspiracy is one as to time and place, and as to all the parties named in the indictment. That is our theory. (R. 470.)

government (R. 60, 89). Five defendants (including this petitioner) to the conspiracy indictment, and a sixth defendant to a separate indictment (consolidated for trial), were tried (R. 620). In the case of that indictment consolidated for trial, the defendant therein (Klein) was found guilty (R. 43); in the case of the conspiracy indictment the jury returned a verdict of guilty as to three defendants, one of them this petitioner, and disagreed as to the other two defendants (R. 43).

The trial judge sentenced this petitioner to a sentence of *eight years in the penitentiary* and fined him \$2,000 (R. 44). Instead of sentencing the petitioner upon each individual count, the sentence was general (R. 44).

We again emphasize, this case was tried, evidence admitted, and the jury instructed by the trial judge on the basis that the offense was *one conspiracy*, continuous in character, extending from late 1935 to September of 1939 (R. 626). The trial judge rejected instructions which would have followed the theory of seven separate offenses (R. 40). It was contended that various defendants had attached themselves to and participated in the conspiracy from time to time during that period. There was *no claim* on the part of the government that there were *in fact* seven separate agreements or conspiracies—save and except as it was and is claimed by the prosecution, that, *as a matter of law*, the proposed violation of several different statutes in the furtherance of one conspiracy will transform the offense into separate conspiracies punishable as such (R. 275, 470). This case, therefore, squarely presents the propriety of the rule of law contended for by the government.

The Circuit Court of Appeals accepted that conception of the case (Op. R. 694). The court holds, that, *as a matter of law*, the presence of several purposes will make separate offenses, punishable as such, out of what was *in fact* only one conspiracy and therefore only one crime (Op. R. 694).

695). This is a view of the law indigenous to the Sixth Circuit. It is opposed by the entire history of the law in respect of the offense of conspiracy. It is contrary to decisions of the Second, Fourth, Fifth and Seventh Circuits. It is *only that view of the law* that results in this grievous and unconstitutional sentence as to this petitioner. The propriety of the rule is raised by motion to elect, by the requests to charge and by the assignments of error (R. 60, 462, 35, 658).

This is not a case where the facts would justify—even remotely—the infliction of a sentence of that severity.

Two men, respectively named Skampo and Dracka, both of whom pleaded guilty and testified for the government, had been parties, in the late fall of 1935, in the operation of an illicit still near Romulus, Michigan (R. 61). In the latter part of 1935, Braverman had some conversations with Skampo at Detroit, Michigan (R. 63, 64). Skampo testified that it was agreed between them that Braverman would ship alcohol in 5-gal. containers from Chicago, Ill., to Detroit, Mich., to Skampo, where it would be disposed of by Skampo and the money remitted to Braverman (R. 64). Shipments were made via motor express (R. 65). Fictitious names of consignors and consignees were employed (R. 79). The evidence showed that over a period of about six to eight weeks, all told there were only about ten to twelve shipments (R. 67). The last shipment by Braverman was January 30, 1936 (R. 80).

At this point Braverman "quit the business" (R. 67). About six to seven weeks after his first connection with the conspiracy, Braverman notified Skampo that he was "quitting business" (R. 67, 80, 296). Both Skampo and Dracka, witnesses for the government, testified positively and with conviction to this effect (R. 67, 80, 296). Between January of 1936 and November of 1939, therefore, neither

Skampo nor Dracka dealt with Braverman or with anyone who purported to represent Braverman (R. 80, 113).

The circumstantial evidence in the case subsequent to January 1936 is consistent with and corroborates the conclusion that Braverman did actually quit the business at this point. No shipments after the latter part of January, 1936 originated with Braverman in any way, shape or form (R. 113). In November of 1936 Skampo and Dracka left Detroit and went to Chicago, in order to carry on their business (R. 70, 71, 97). They carried on their business from a warehouse building in Chicago until May 1937 (R. 106). Then Skampo and Dracka went back to Detroit (R. 106). In January 1938, one Al Johnson—not apprehended and tried—went to Detroit and saw Dracka, and he arranged to obtain from Skampo and Dracka the tools and equipment necessary to the business. Johnson appears to have carried on the business up to September of 1939, making shipments from Chicago to Cleveland, Ohio.

During all this period—from about the latter part of January 1936 throughout the balance of the term of the alleged conspiracy—Braverman not only had *nothing to do* with the operation of the conspiracy but—according to the government's own evidence—he had *actually withdrawn* from the conspiracy at the time stated. The question of his withdrawal should have been submitted to the jury specifically, but petitioner's requests to instruct the jury on that point were refused (R. 39), and the charge as given did not cover the point (R. 620-644).

This is not a case therefore where the facts would justify such a sentence. Granting to the government, as one must after trial, the benefit of every factual intendment in the case, *the sentence here is nevertheless based on an erroneous and unconstitutional conception of the law applicable to this particular offense.* It seeks to punish this petitioner

and deprive him of his liberty, on the unfounded theory of law that he is guilty of seven offenses instead of one. The maximum sentence authorized by statute is a sentence of two years and a fine of not more than \$10,000 (18 U. S. C. A. 88).

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

First: The decision of the Circuit Court of Appeals for the Sixth Circuit is contrary to and in conflict with decisions of the Circuit Court of Appeals for the Second, Fourth, Fifth and Seventh Circuits.

Second: The decision of the Circuit Court of Appeals for the Sixth Circuit and the judgment of sentence affirmed by said court, is contrary to law and is in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

Third: In adjudging sentence the District Court has so far departed from the accepted and usual course of judicial proceedings as to require (in the interest of justice) an exercise of this court's power of supervision.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred in affirming the judgment of conviction and the sentence of eight years thereupon.

PRAYER FOR WRIT.

Harry Braverman, petitioner, by the undersigned his counsel, respectively prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Sixth Circuit, to the end that the record of this cause be brought to this court, that this cause may be reviewed and determined by this court and that your petitioner may

have such other and further relief as the nature of this case may justify. In support of this, his petition, he tenders the supporting brief and argument of counsel hereunto annexed.

Respectfully submitted,

PRESTON BOYDEN,
134 South LaSalle Street,
Chicago, Illinois,
Attorney for Petitioner.

JAMES J. MAGNER,
Of Counsel.

SUPPORTING BRIEF.

MAY IT PLEASE THE COURT:

GENERAL PRINCIPLES INVOLVED.

There is little room for dispute with respect to the general principles of law applicable to the federal offense of conspiracy, but the restatement thereof here will be beneficial as a background for the point we wish to present.

A conspiracy is the partnership of two or more persons by concert of action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means. *Pettibone v. United States*, 148 U. S. 197, 203; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443. The gist of the crime is the confederation or combination of minds. *United States v. Hirsch*, 100 U. S. 33, 34. That statement: "the gist of the crime is the confederation or combination of minds" has been repeated time and time again in opinions dealing with this offense. It is very important in this particular case. The offense of conspiracy may, of course, be established by inferences drawn from evidence circumstantial in character. *Johnson v. United States*, 82 F. (2d) 500, 504. What is meant by the last statement, and statements of similar character, is, that the existence of an unlawful agreement or partnership is a fact to be deduced from circumstantial evidence. The conspiracy or confederation formed for the purpose of committing an offense, is a crime or an offense *entirely separate and different from the substantive offense itself*. *Ford v. United States*, 273 U. S. 593. The crime of conspiracy is complete, under our national statute, when an overt act, calculated to effect the object of the conspiracy, is done by at least one of the conspirators. *United States v. Hirsch*, 100 U. S. 33. The overt act need not be a crim-

mal act, nor need it be the very crime that is the object of the conspiracy. *United States v. Rabinowich*, 238 U. S. 78, 86. All of the conspirators need not join in the commission of an overt act, because the act of one is the act of all. *Logan v. United States*, 144 U. S. 263. Finally, it is immaterial whether the purpose to be achieved by the unlawful confederation is single or several, or whether the purpose be ever achieved. *Williamson v. United States*, 207 U. S. 425, 447; *Goldman v. United States*, 245 U. S. 474, 477; *Heskett v. United States* (C. C. A. 9), 58 F. (2d) 897, 902 (cert. den. 287 U. S. 643). The conspiracy indictment need only identify the *general nature* of the offense to be committed. *Wong Tai v. United States*, 273 U. S. 77. A conspiracy to commit several offenses against the United States is sustained by proof of a conspiracy to commit *any one of such offenses*. *Kepl v. United States* (C. C. A. 9); 299 Fed. 590, 591.

These general principles found ready acceptance in the court below. Some of them are referred to in the opinion. It is with respect to the significance to be accorded, as a *matter of law*, to the purpose or purposes of an unlawful partnership that the court below fell into error. The court held, in substance, that even where the government relies upon one conspiracy, continuous in character, the presence of several unlawful purposes will, *ipso facto*, make several conspiracies out of it. This, it is respectfully submitted, is a mistaken view of the law and an unconstitutional splitting of an offense; it punishes the petitioner and seeks to deprive him of his liberty on the erroneous *conclusion of law* that he is guilty of seven offenses instead of one.

THE ERROR IN THE OPINION BELOW.

Ever since the Ordinance of Conspirators, 33 Edw. I (1305), the gist of the offense of conspiracy has consisted in the confederation or alliance of minds to effect some unlawful objective; the ancient and modern statutes alike undertook to frustrate *evil intents* and interdicted the gathering together of minds to effectuate such intents. Where it be called a confederation, or combination, or conspiracy, or unlawful partnership, is unimportant. It is the *agreement* at which the national conspiracy statute is directed. The *agreement* is the core of the crime. Whether the purposes thereof be plural or singular is immaterial. Proof of one unlawful purpose is as good as proof of one hundred. Prove one hundred purposes (and but one agreement) and it is still one offense. Whether the *agreement* succeeded or failed of accomplishment is of no importance.

This court has held that where the same act or transaction constitutes a violation of two distinct statutes, the test to be applied to determine whether there are *two offenses*, or only *one*, is whether each provision requires proof of a fact which the other does not. *Garreres v. United States*, 220 U. S. 338, 342; *Blockburger v. United States*, 284 U. S. 299, 304. The Sixth Circuit Court of Appeals borrows that principle of law from these substantive law cases and holds, that because, in a conspiracy case, the proof of the purpose to *possess* distilled spirits, for example, might differ from the proof required to show a purpose to *transport* distilled spirits, the first requires proof of a fact which the other does not and therefore two offenses are established (Op. R. 694). And see *Fleisher v. United States* (C. C. A. 6), 91 F. (2d) 404, 406.

There are two major fallacies in this line of reasoning.

Firstly, the court overlooks the proposition that the offense consists in the *agreement* or the confederation, and

not in the purpose. Unless it be claimed that there were *separate agreements* for such purposes separately reached or arrived at—and that is not the case here—the conspiracy is still single and not several, however multifarious the purpose.

Secondly, and more important, where, as in this case, the government relies upon one conspiracy or agreement continuous in character (R. 275, 470), adding, to proof of one unlawful purpose, proof of a second, third, fourth, fifth, sixth and seventh, does not, as the court decides, supply differing elements of differing crimes but merely *cumulates the proof* in respect of *one element* of the *original crime*. The additional proof buttresses the proof on one element of the crime (*i. e.*, its objective) and that is all it does.

The elements to be proved in the federal crime of conspiracy are: (1) the agreement; (2) the purpose or objective; and (3) the overt act. When due proof is made of one unlawful purpose (*i. e.*, statute to be violated) proof of the offense of conspiracy (assuming of course, proof of the agreement and the overt act) is complete. Further proof of further purposes—absent proof of separate *agreements*—affects the case quantitatively and not qualitatively by merely increasing the quantum of proof *on one element of the crime*.

As a matter of the civil law, if at a meeting, A and B agree to form a partnership to sell (1) groceries, and (2) securities, and (3) automobiles, would anyone say that the agreement to sell three different classes of commodities constituted three separate partnerships? The question answers itself. The principle is the same in the case at bar, for, in its major aspects, the law of criminal conspiracy is the law of partnership transferred to the purposes of a criminal case. Therefore, if A and B agree to commit the crime of purchasing and selling alcohol, without stamps, licenses, etc., and implied or arranged for, in that agree-

ment when it was made, were all the phases of transportation and operation counted on in this indictment, the original agreement constituted the single offense of conspiracy when it was made and when the first overt act thereunder took place; it remained so thereafter and is punishable only as such.

The Circuit Court, it is respectfully submitted, has made an erroneous application of the Blockburger and Albrecht cases.

DECISIONS IN OTHER CIRCUITS.

In the case of *Frohwerk v. United States*, 249 U. S. 204, the defendant advanced the contention that, inasmuch as the first count of the indictment there involved attributed a multiplicity of purposes to the conspiracy charged, the account was duplicitous. Mr. Justice Holmes disposed of that contention in these words (p. 210):

"The conspiracy is the crime and that is one, however diverse its objects."

In the case of *United States v. Manton* (C. C. A. 2), 107 F. (2d) 834, 838, the appellant contended that the conspiracy count, stating many purposes to the conspiracy, was, for that reason, duplicitous. The court said:

"The conspiracy constitutes the offense *irrespective of the number or variety of objects which the conspiracy seeks to attain*, or whether any of the ultimate objects be attained or not." (Italics ours.)

The case of *Short v. United States* (C. C. A. 4), 91 F. (2d) 614, 622, was a conspiracy case involving the violation of a number of the Internal Revenue statutes. It would be contrary to the proprieties of this petition to review the facts of that case at length here, but an extract from page 622 of the opinion illustrates the rule prevailing in the Fourth Circuit and is precisely in point:

"It is to be noted that the rule in case of prosecution for conspiracy to violate statutes is different from the

rule applicable in prosecutions for violation of the statutes themselves. In the latter case, in the absence of circumstances giving rise to the doctrine of merger, there may be a separate prosecution for each of the statutes violated without any splitting of offenses; for each of the statutory crimes involves a different element. In the case of conspiracy, however, the gist of the crime is the unlawful agreement, or partnership in criminal purposes thereby created; and one conspiracy does not become several because it may incidentally involve the violation of several statutes. As said by Judge Grubb, speaking for the Circuit Court of Appeals of the Fifth Circuit in *Norton v. United States* (C. C. A. 5th) 295 F. 136, 137: 'The fact that the conspiracy contemplated numerous violations of law as its object does not make the indictment duplicitous. The gist of the offense is the conspiracy, and it is single, though its object is to commit a number of crimes.' And the rule against splitting a conspiracy for purposes of prosecution was thus stated by Judge Lindley in *United States v. Weiss* (D. C.) 293 F. 992, 994: 'At the threshold it must be noted that the government cannot split up one conspiracy into different indictments, and prosecute all of them, but that prosecution for any part of a single crime bars any further prosecution based upon the whole or a part of the same crime. *Murphy v. U. S.* (C. C. A.) 285 F. 801, 804, at page 816; *In re Snow*, 120 U. S. 274, 7 S. Ct. 556, 30 L. Ed. 658; 16 Corpus Juris, 270, and cases there cited.'

In the case of *Powe v. United States*, 311 F. (2d) 598, 599, the Fifth Circuit Court of Appeals stated the proposition bluntly. The court said, page 599:

"The government cannot split up one conspiracy and make several conspiracies out of it."

Two decision in the Seventh Circuit Court of Appeals are precisely in point. They are peculiarly applicable to the merits of this petition for writ of certiorari, because this petitioner was taken out of the Seventh Circuit, where some of the overt acts complained of in this indictment

took place; and tried in the Sixth Circuit, where a rule would seem to prevail which is contrary to that of the Seventh Circuit.

In the case of *Miller v. United States*. (C. C. A. 7), 4 F. (2d) 228 (cer. den. 268 U. S. 692), Miller was tried and convicted under two indictments, consolidated by agreement for trial. The first indictment contained *two* counts, each charging Miller and others with conspiring to commit an offense against the United States. The second indictment charged the substantive offenses and contained *four* counts: (1) unlawfully removing, no-tax-paid alcohol from a government warehouse; (2) aiding and abetting others in such removal; (3) transporting distilled spirits without a permit, and (4) breaking open the lock of a bonded warehouse. Miller was convicted on all counts of both indictments except Count 4 of the second, upon which he was acquitted. His sentence was as follows: Two years and a fine on the first conspiracy count; two years and a fine on the second conspiracy count; three years on Counts 1 and 2 of the second indictment; a fine on Count 3 of the second indictment—the imprisonment terms to run consecutively. The first count of the conspiracy indictment charged as the object of the conspiracy, the illegal transportation of alcohol; the second count of the conspiracy indictment charged the aiding and abetting in the removal of spirits from a government warehouse, no tax having been paid. It will be observed that two separate purposes were stated in the two separate counts, and it may be assumed that the evidence fully sustained conviction on both counts. The Circuit Court of Appeals eliminated the sentence on Count 1 of the conspiracy indictment and said:

“It is contended that the two counts are for the same offense, and that in any event the evidence does not warrant separate cumulative penalties under these counts. That there was a conspiracy between Miller and others to steal or aid in stealing and removing from the warehouse this large quantity of alcohol.

there is, under the record, no shadow of doubt. Stealing the alcohol naturally involved the seizing of it where it was and transporting it elsewhere. While such acts might be prosecuted and punished separately, if under different statutes defining and penalizing the several acts, *a single conspiracy, if covering the entire transaction, may not be split up into a plurality of offenses.* *Murphy v. United States*, (C. C. A.) 285 F. 801. There was here no proof of a conspiracy, save as it would of necessity be drawn from the concert of action between Miller and the others. In the very nature of things, this would not have occurred without prior understanding and confederation between them as to the purpose and the plan of its execution. A state of facts might appear, showing a conspiracy to remove the alcohol and a separate independent conspiracy to transport it; but there is nothing *in the evidence* which warrants the conclusion that there were here two separate conspiracies—one for Miller to transport industrial alcohol, and the other for Miller to aid and abet in the removal from the warehouse of the alcohol.” (Italics ours.)

In the case of *Murphy v. United States* (C. C. A. 7), 285 Fed. 801, 817, the court held that in the case of a conspiracy among individuals to rob a mail truck, there could not reasonably be separate convictions for (1) conspiracy to hold up and rob the truck, and (2) conspiracy to have and conceal stolen property, even though two separate substantive offenses were created by those statutes which were severally alleged as the objects of the two conspiracies. In the *Murphy* case the court reached its conclusion on consideration of Murphy's petition for rehearing and modified the sentence inflicted on Murphy accordingly. The court said (p. 817):

“It may be admitted that separate conspiracies may be thus formed, to effectuate which different plans involving perhaps different conspirators are formulated. We need not decide any such imaginary case, but content ourselves with a decision applicable to the facts in this case. The evidence leaves no room for legiti-

mate discussion. It conclusively establishes but one conspiracy. There was no separate conspiracy to have and to conceal the stolen property, and no evidence tending to show such separate combination.

"The Fifth Amendment to the Constitution protects all against double punishment for the same offense. Its enforcement and its application demand a test which is a practical, not a theoretical one. It is the evidence, and not the theory of the pleader, to which we must look to determine this issue. And it is needless to add that one accused of crime, regardless of kind or magnitude of the offense, is entitled to the protection of this section of the Constitution. The sentence on this count therefore cannot be sustained." (Italics ours.)

In the case of *United States v. Anderson* (C. C. A. 7), 101 F. (2d) 325, 333, where this point was raised by the appellants, the court held that though the objects therein complained of might have differed there was but one conspiracy. The court said (p. 333):

"This does not mean that both indictments were not properly pleaded, as a precautionary matter, but we cannot believe that Congress intended to permit the accumulation of sentences upon diverse objects of a conspiracy where there was but one conspiracy and the evidence supporting each was precisely the same."

The judgment was affirmed as to all matters except as to the sentence of imprisonment and fines, and as to those matters the cause was reversed with instructions to enter sentences of imprisonment and fines in a manner not inconsistent with the opinion of the court. (Cert. den. 307 U. S. 625.)

CASES REFERRED TO IN OPINION DISTINGUISHED.

The opinion of the Circuit Court cites and relies upon the following cases:

Blockburger v. United States, 284 U. S. 299, 304.

Albrecht v. United States, 273 U. S. 1, 11.

Parmenter v. United States (C. C. A. 6), 2 F. (2d) 945, 946.

Fleisher v. United States (C. C. A. 6), 91 F. (2d) 404.

Meyers v. United States (C. C. A. 6), 94 F. (2d) 433.

Telman v. United States (C. C. A. 10), 67 F. (2d) 716.

Yenkichi Ito v. United States (C. C. A. 9), 64 F. (2d) 73, 77.

We have already shown how the principle laid down in the *Blockburger* and *Albrecht* cases has been erroneously applied in this case. There is the added distinguishing circumstance that both the *Blockburger* and *Albrecht* cases involved an inquiry into the nature of the substantive offense as defined by the particular statute, *i. e.*, whether or not Congress *intended* to punish separately, distinct, though closely connected, steps in a given transaction.

In the *Parmenter* case (C. C. A. 6), 2 F. (2d) 945, the question of double prosecution and double punishment was suggested to the Sixth Circuit by the appellant in that case. The court, as then constituted, *examined the evidence* in the light of appellant's contention but concluded from the evidence that the proof was not "conclusive that the plan to take it [contraband] from the shore to the warehouse was part of the plan to bring it to the shore." In other words, in that case the court held that on the evidence submitted the conspiracies for which appellant had been prosecuted were *in fact* several and not single.

In the *Telman* case (C. C. A. 10), 67 F. (2d) 716, the question of double punishment seems not to have been suggested by appellant's counsel or considered by the court, and the extent of the sentence does not appear from the reported opinion.

In the *Yenkichi* case (C. C. A. 9), 64 F. (2d) 73, while the question of double punishment was there suggested by the appellant, the Circuit Court of Appeals very properly held that the question presented was academic, because the sentence inflicted on both counts in that case had been ordered to run *concurrently*. The appellant was therefore not prejudiced.

The decision of the Circuit Court of Appeals, therefore, in this case and the case of *Meyers v. United States*, 94 F. (2d) 433, follows and applies earlier observations made by the Court in the case of *Fleisher v. United States*, 91 F. (2d) 404, 406. As a matter of fact, at the opening of the trial in this case the Assistant District Attorney advised the trial court, in opposing petitioner's motion to require the government to elect on what count it would proceed, that: "we are relying upon the authority of the *Fleisher* case in this district." (R. 59.)

The *Fleisher* case was a decision in respect of a *pleading only*. No evidence had been preserved and transmitted to the reviewing court. That was highly important because, in the absence of evidence preserved in a record, the court was *obliged*, after conviction, to *assume*, on review, as stated in the opinion (page 406): "that testimony was offered showing the existence of four separate conspiracies."

It is not contended that a prosecutor may not *plead* as many different conspiracies as he wishes. As the Seventh Circuit Court of Appeals suggests, he may do this "as a precautionary matter." *United States v. Anderson*, 101 F. (2d) 333. But after a case has been tried by the government on the basis that it was in fact one continuous con-

spiracy, when evidence has been admitted and the jury has been charged on that basis, and when the defendant's requests to charge on the basis of separate offenses has been refused by the trial judge, then, to sentence the petitioner to punishment for seven separate offenses is obviously erroneous.

Either the sentence of punishment on the basis of seven separate offenses is, as we submit, erroneous, or the case should have been submitted to the jury on that theory, and the refusal so to do was error.

When the case at bar was argued in the Sixth Circuit Court of Appeals no decisions from other circuits were presented by the government to the Sixth Circuit Court of Appeals justifying the application of the principle of law contended for by the prosecution. We have hereinabove analyzed all of those referred to in the opinion of the court.

CONCLUSION.

It is respectfully submitted that, for the reasons hereinabove stated, the sentence here pronounced was and is based upon an erroneous conception of law. It seeks to inflict punishment on this petitioner for seven offenses, when, both as a matter of fact and as a matter of correct law, there was but one. It deprives petitioner of his liberty for a period of time on a ground that is without sanction in the law; it subjects him to double and to fourfold punishment. Both are contrary to the spirit and the letter of the Fifth Amendment. It is respectfully submitted that as a matter of justice to this petitioner his petition for writ of certiorari should be allowed.

Respectfully submitted,

PRESTON BOYDEN,

134 South La Salle Street,
Chicago, Illinois,

JAMES J. MAGNER,

Of Counsel.

Attorney for Petitioner.



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CHARLES EDWARD BRIDLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1942.

No. 43

HARRY BRAVERMAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR PETITIONER.

JAMES J. MAGNER,

Attorney for Petitioner.

PRESTON BOYDEN,

Of Counsel.

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In this case, where the several counts of the indictment were conceded by the Government at the trial to charge the illegal objects of one continuing conspiracy, where the proof disclosed but one such conspiracy, and where the case was submitted to the jury on that theory only, the jury necessarily found only that the petitioner was guilty of participation in a single conspiracy; punishment for seven offenses, therefore, is plainly erroneous..... 21

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1942.

No. 43

HARRY BRAVERMAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR PETITIONER.

OPINION BELOW.

The opinion of the Circuit Court of Appeals for the Sixth Circuit (R. 607-614) is reported in 125 F. (2d) 283.

JURISDICTION.

The jurisdiction of this court is invoked under Judicial Code, § 248a, as amended by the Act of February 13, 1925; 28 U. S. C. A., § 347a.

The judgment of the Circuit Court of Appeals was entered on January 14, 1942 (R. 607).

Petitioner's application for a rehearing was denied on March 2, 1942 (R. 614).

This court granted *certiorari* April 14, 1942 (R. 615).

QUESTION PRESENTED.

The question presented is whether—without violating the provisions of the Fifth Amendment to the Constitution of the United States—an offense which is treated *for purposes of the trial* as having been, in fact, one continuous conspiracy having differing purposes, can, *for the purpose of inflicting sentence*, be arbitrarily split according to the number of its alleged purposes and severed into separate conspiracies.

STATUTE INVOLVED.

Section 37 of the Criminal Code (18 U. S. C. A. 88) reads: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

STATEMENT OF THE CASE.

In the District Court for the Eastern District of Michigan petitioner Braverman, and others, were indicted for the crime of conspiracy (R. 1-3). The indictment was divided into seven counts; the allegations of each count were alike as to parties, time and places of entry into, and duration of, the conspiracy. Each count, however, charged as an object of the conspiracy the violation of a separate statute, viz.: (Count 1—R. 1-6) *unlawfully to carry on the business of wholesale and retail liquor dealers* without having the special occupational tax stamp as required by law; (Count 2—R. 6-10) *unlawfully to possess distilled spirits*, the immediate containers thereof not having affixed thereunto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all internal rev-

venue taxes imposed on such spirits; (Count 3—R. 10-13) unlawfully *to transport large quantities of distilled spirits*, the immediate containers not having affixed thereunto the required stamps; (Count 4—R. 13-15) unlawfully *to carry on the business of distillers* without having given bond as required by law; (Count 5—R. 15-18) unlawfully *to remove, deposit and conceal* distilled spirits in respect whereof a tax was imposed by law with intent to defraud the United States of such tax; (Count 6—R. 18-20) unlawfully *to set up and possess, keep in custody, and control, unregistered stills and distilling apparatus*; and (Count 7—R. 21-23) unlawfully *to make and ferment mash* fit for the production of distilled spirits on unauthorized premises.

It is indisputable that beginning with the opening of the trial, and continuing throughout, both the District Attorney and the trial judge regarded the offense involved as, in fact, one continuous conspiracy having seven differing purposes.* The court declined to charge the jury on the theory of seven separate *agreements or conspiracies*.

* "The Government claims in this case that this was a continuing conspiracy. It started back at the time alleged in the indictment and continued down for several years."—(Charge to jury; R. 573.) (See also, R. 585, 586.)

The Court: Well, let's settle that. That is an extravagant statement. You claim there are seven conspiracies.

Mr. Frederick (Petitioner's counsel): Set up in seven separate counts. Each count sets up a conspiracy, yes, your Honor, seven counts. Each count sets up a conspiracy.

The Court (To the District Attorney): Is that right?

Mr. Hopping (Assistant District Attorney): I would not say that that was, your Honor. It is one count—

The Court: Well, never mind.

Mr. Hopping: One conspiracy indictment and seven counts charging seven illegal objects of the conspiracy.—(Colloquy between court and counsel. R. 247.)

The Court: * * Now, do I understand that each separate conspiracy has reference, first, to manufacture, to transportation, to failure to pay tax, and others?

Mr. Hopping: Yes, your Honor, those are the separate illegal objects, alleged as to the objects of this conspiracy.

The Court: *I want to hear you on the law as to what right you have to separate all of these, when, as a matter of fact in my judgment, you call it one conspiracy.* (Italics ours.) (R. 426.)

Mr. Hopping (Assistant District Attorney): *The conspiracy is one as to time and place, and as to all the parties named in the indictment. That is our theory.* (Italics ours.) (R. 428.)

There were pleas of guilty by some defendants who testified for the government (R. 48, 75). Five defendants (including this petitioner) to the conspiracy indictment, and a sixth defendant to a separate indictment (consolidated for trial) were tried. In the case of that indictment consolidated for trial with the one at bar, the defendant therein (Klein) was found guilty (R. 35); in the case at bar, the jury returned the verdict of guilty as to three defendants, one of them this petitioner, and disagreed as to the other two defendants (R. 35).

The trial judge imposed a *general* sentence on petitioner of *eight years in the penitentiary* and fined him \$2,000 (R. 33).

We again emphasize, this case was tried, evidence admitted, and the jury charged by the trial judge on the basis that the offense for which the defendants were tried was one conspiracy continuous in character, extending from late 1935 to September of 1939 (R. 573). It was contended that the various defendants had attached themselves to and participated in the conspiracy from time to time during that period. Instructions which would have submitted the theory of seven separate offenses were refused (R. 33). There was *no claim* on the part of the government that there were in fact seven separate agreements or conspiracies—save and except as it was claimed by the District Attorney, that, *as a matter of law*, the proposed violation of several different statutes in the furtherance of one conspiracy, transformed the crime into separate conspiracies punishable as such (R. 248, 428).

The Circuit Court of Appeals accepted the District Attorney's conception of the law. The court held, that, as a matter of law, the presence of several purposes will make separate offenses, punishable as such, out of what was, in fact, only one conspiracy and, as this petitioner contends, but one crime. This is a view of the law contrary

to decisions of the Second, Fourth, Fifth and Seventh Circuits. It is contrary, furthermore, to the historical conception of the crime of conspiracy. The question was appropriately raised on the record in the trial court by motions to elect made at the opening of the trial, renewed at the close of the government's case, renewed again at the close of all of the evidence, by requested instructions, and, in the Circuit Court of Appeals, by appropriate assignments of error (R. 47, 29, 420, 600).

Aside from the question of law here presented, the substantial facts do not justify the infliction of a sentence of the severity here involved.

In the late Fall of 1935, two men, Skampo and Dracka, both of whom pleaded guilty and testified for the government, had been partners in the operation of an illicit still located near Romulus, Michigan (R. 48). In the latter part of 1935 Braverman had some conversations with Skampo at Detroit, Michigan (R. 50, 51). Skampo testified that it was agreed between them that Braverman would ship alcohol in 5-gal. containers from Chicago, Illinois, to Detroit, Michigan, to Skampo, where it would be disposed of by Skampo and the money remitted to Braverman (R. 51, 52). Shipments were made in wood crates via motor express trucks operating between Chicago, Illinois, and Detroit, Michigan (R. 52). The names of the consignor and consignees were fictitious (R. 65-66). The evidence showed that over a period of about six to eight weeks, all told there were about ten to twelve such shipments from Braverman (R. 54). The last shipment by Braverman was January 30, 1936 (R. 66).

At this point Braverman ceased shipments and notified Skampo that he was "quitting business" (R. 54, 66, 267). Both Skampo and Dracka, witnesses for the government, testified positively to this effect (R. 54, 66, 267). Between January of 1936 and November of 1939 neither Skampo

nor Dracka dealt with Braverman or with anyone who purported to represent Braverman (R. 66, 97).

The substantial evidence in the case, subsequent to January, 1936, is consistent with and corroborates the conclusion that Braverman did actually quit the business at that point. No shipments after the latter part of January, 1936, were shown to have originated with Braverman in any way, shape or form (R. 97).

In November of 1936 Skampo and Dracka left Detroit and went to Chicago in order to carry on their business from that point (R. 57, 58, 83). They carried on their business from a warehouse building in Chicago from November, 1936 until May, 1937 (R. 91). Then Skampo and Dracka returned to Detroit (R. 91).

In January, 1938, one Al Johnson—a defendant who was not apprehended and tried—went to Detroit, interviewed Dracka and arranged to obtain from Skampo and Dracka the tools and equipment located in the Chicago warehouse building and necessary to carry on the business (R. 93). Johnson appears to have carried on the business up to September of 1939, making shipments from Chicago, Illinois, to Cleveland, Ohio.

During all this period—from about the latter part of January, 1936, throughout the balance of the term of the alleged conspiracy—Braverman not only had nothing to do with the operation of the conspiracy but—according to the government's own evidence—had actually withdrawn from the conspiracy at the time stated.

SPECIFICATION OF ERRORS TO BE URGED.

1. The Circuit Court of Appeals erred in affirming the judgment of conviction and the sentence of eight years thereupon.
2. The Circuit Court of Appeals erred in affirming a sentence of eight years for seven separate offenses, when the case was tried to the jury as one involving a single, continuous conspiracy.

SUMMARY OF ARGUMENT.

1. It is well settled that the *gist* or *gravamen* of the crime of conspiracy consists in the agreement; that one conspiracy does not become several, because it may incidentally involve the violation of several statutes: (*Post*, pp. 8-10, 13-18.)

2. The Circuit Court of Appeals failed to appreciate that in the case at bar both the Government and the trial court treated and tried the case as that involving a *single, continuing conspiracy*; that the *offense* was therefore *unitary*, notwithstanding it may have had several purposes. (*Post*, pp. 10-13.)

3. The Circuit Court's application of the *Blockburger* and *Albrecht* cases was, in this case, erroneous, because where, as here, the conspiracy was conceded to be single and continuous, then proof showing more than one purpose does not supply proof of *different* and *separate* offenses, but instead, cumulates proof showing the nature of the objective. (*Post*, pp. 12-13.)

4. The imposition of a sentence of *eight years* on the theory of seven separate offenses, was contrary to that theory upon which the case was submitted to the jury, amounts to an unconstitutional "splitting" of the offense for purposes of punishment, and sentences this petitioner on a theory of culpability for which he was never tried. (*Post*, p. 21.)

ARGUMENT.

I.

GENERAL PRINCIPLES OF THE LAW OF CONSPIRACY.

While the general principles of law applicable to the federal offense of conspiracy are well settled, their re-statement here will be beneficial as a background for the point we wish to present.

A conspiracy is the partnership of two or more persons by concert of action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means. *Pettibone v. United States*, 148 U. S. 197, 203; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 465. The gist of the crime is the confederation or combination of minds. *United States v. Hirsch*, 100 U. S. 33, 34. The statement: "the gist of the crime is the confederation or combination of minds," has been repeated time and again in opinions dealing with this offense. It is very important in this particular case. The offense of conspiracy may, of course, be established by inferences drawn from evidence circumstantial in character. *Johnson v. United States*, 82 F. (2d) 500, 504.

A conspiracy formed for the purpose of committing an offense, is a crime *entirely separate and distinct from the substantive offense itself*. *Ford v. United States*, 273 U. S. 593, 619; *Clune v. United States*, 159 U. S. 590, 595. Under the national statute the crime of conspiracy is complete, when an overt act, calculated to effect the object of the conspiracy, is done by at least one of the conspirators. *United States v. Hirsch*, 100 U. S. 33, 34. Proof of the overt act is required, not to show the unlawful agreement, but to show that the unlawful agreement, while subsisting,

became operative. *United States v. Donau*, 11 Blatchf. 168, 25 Fed. Cas. 890.—The overt act need not be a criminal act, nor need it be the very crime that is the object of the conspiracy. *United States v. Rabinowich*, 238 U. S. 78, 86. All of the conspirators need not join in the commission of an overt act, because, in contemplation of law, the act of one is the act of all. *Logan v. United States*, 144 U. S. 263, 368.

The conspiracy indictment need only identify the general nature of the offense to be committed. *Wong Tai v. United States*, 273 U. S. 77, 81. It is immaterial whether the purpose to be achieved by the unlawful conspiracy is single or several, or whether the purpose be ever achieved. *Williamson v. United States*, 207 U. S. 425, 447; *Goldman v. United States*, 245 U. S. 474, 477; *Heskett v. United States* (C. C. A. 9) 58 F. (2d) 897, 902 (*cert. denied*, 287 U. S. 643). Finally, a conspiracy to commit several offenses against the United States is sustained by proof of a conspiracy to commit any one of such offenses. *Kepl v. United States* (C. C. A. 9) 299 Fed. 590, 591.

When the unlawful agreement contemplates bringing to pass a continuous result requiring continuous cooperation of the conspirators, the conspiracy is said to be continuing, but is nevertheless single. *United States v. Kissell*, 218 U. S. 601, 607; *Brown v. Elliott*, 225 U. S. 392, 400. In *Ford v. United States*, 273 U. S. 593, 602, an indictment charged in one count a continuous conspiracy to violate two laws relating to the importation of intoxicating liquor into the United States. In rejecting defendant's contention that the indictment was duplicitous, this court said:

"The charge is unitary in relating to one continuous conspiracy, although in proof of it different circumstances constituting it and overt acts in pursuance of it are disclosed."

These general principles found ready acceptance in the court below. Some of them are referred to in the opinion.

It is with respect to the significance to be accorded, *as a matter of law*, to the purpose or purposes of an unlawful partnership that the court below fell into error. The court held, in substance, that even where the government relies upon one conspiracy, continuous in character, the presence of several unlawful purposes will, *ipso facto*, make several punishable conspiracies out of it. This, it is respectfully submitted, is a mistaken view of the law and an unconstitutional splitting of the offense. It punishes the petitioner on the erroneous conclusion of law that he is guilty of seven offenses instead of one.

II.

THE CIRCUIT COURT FAILED TO APPRECIATE THAT THE OFFENSE OF CONSPIRACY CONSISTS IN THE AGREEMENT.

Ever since the Ordinance of Conspirators, 33 Edw. I. (1305), the gist of the offense of conspiracy has consisted in the confederation or alliance of minds to effect some unlawful objective. The old and new statutes alike undertook to frustrate *evil intents* and therefore interdicted the gathering together of minds to effectuate such intents. It is the *agreement* that is the core of the crime and against which the national conspiracy statute is directed.*

* The present conspiracy statute (18 U. S. C. 88) originated as Section 30 of an Act entitled "An Act to amend existing laws relating to Internal Revenue and for other purposes," approved March 2, 1867. (14 Stat. 471, 484, c. 169).

On June 27, 1860 (14 Stat. 74, c. 140) a commission was appointed to revise and consolidate the statute laws of the United States. That commission was not authorized to make any changes in the law as it stood, but only to alter the existing text so far as necessary to make clear the intention of Congress.

The commission reported in 1873, took the conspiracy provision out of the special class of revenue legislation, and placed it under a chapter, entitled, "Crimes against the Operations of the Government," as an independent section (5440) of the revision. The revisions in the text were purely formal.

As the law stood after the 1873 revision it provided that "all the parties to such conspiracy shall be liable to a penalty of *not less than one thou-*

In examining into the question of double jeopardy, this court has held that, in order to ascertain whether the same act or transaction constitutes a violation of *two distinct statutes*, the test to be applied, is to ascertain whether each statutory provision requires proof of a fact which the other does not. *Gavieres v. United States*, 220 U. S. 338, 342; *Blockburger v. United States*, 284 U. S. 299, 304. The Sixth Circuit Court of Appeals borrowed that principle of law from these substantive offense cases, and held that each count was separately punishable (R. 611).

There are two major fallacies in the court's decision.

First: The court overlooks the proposition that in the case of the crime of conspiracy, the *gist* of the offense consists in the *agreement*, and not in the *purpose*. Unless it be claimed—and we emphasize again that such was not the case on this record—that there were *separate agreements* for such purposes, separately reached or arrived at, the conspiracy is still single and not several, however multifarious the purpose. "The crime of conspiracy is not to be confounded with the objects of the conspiracy." *State v. Profita*, 114 N. J. L. 334, 338, 176 A. 683, 685. *Brown v. State*, 130 Fla. 479, 486.

sand dollars and *not more* than ten thousand dollars and to imprisonment for not more than two years.

In 1879 the conspiracy statute was amended and on this occasion its punishment provisions were ameliorated.

By an Act approved May 17, 1879 (21 Stat. 4, c. 8), section 5440 was amended so as to provide for a fine of *not more* than ten thousand dollars, or imprisonment for *not more* than two years, or both, in the discretion of the court, *in lieu of the cumulative punishment provided for in the original section*.

As explained to Congress by the proponents of the bill, the original provision for a fine of *not less* than one thousand dollars was regarded as too great for conspiracies involving the commission of trivial substantive offenses. (See remarks of Congressman Herbert, Cong. Rec., House Proceedings April 30, 1879, at p. 998, Cong. Rec., 46th Cong., 1st Sess., and remarks of Senator Lamar, Senate Proceedings May 14, 1879, at p. 1315, Cong. Rec., 46th Cong., 1st Sess.)

"The amendment is deemed to be needful in order to enable the court to adapt the punishment to the measure of the offense described in the statutes, many of which are small and *trivial*!"—Senator Lamar.

Second: The cases cited are inapplicable for the reason, that where, as in this case, the Government relied upon one conspiracy or agreement continuous in character (R. 275, 470), adding, to proof of the first unlawful purpose, proof showing a second, third, fourth, fifth, sixth and seventh, *does not*, as the court decides, supply *differing elements* of differing offenses, but merely *cumulates the proof on one element* of the original offense. The additional proof buttresses the case on *one element* of the crime (i. e., its object) and that is all it does. The matters to be proved in the federal crime of conspiracy are: (1) the agreement; (2) the nature of its purpose or objective; and (3) the overt act. When due proof has been made of one unlawful purpose, proof of the offense of conspiracy (assuming, of course, proof showing the agreement and the overt act) is then complete. Further proof of further purposes—there being no proof or contention of separate agreements—affects the case quantitatively and not qualitatively merely by increasing the quantum of proof on one feature of the crime.

As a matter of the civil law, if at a meeting *A* and *B* agree to form a partnership to sell (1) groceries, and (2) securities, and (3) automobiles, would anyone say that the agreement to sell three different classes of commodities constituted three separate and independent partnerships? The question answers itself. The principle operates in like manner in the case at bar, for, in many of its major aspects, the law of criminal conspiracy is the law of partnership transferred to the purposes of a criminal case. Therefore, if *A* and *B* agreed together for the operation of a still, purchase and sale of alcohol, without the requisite stamps, licenses, etc., and implied or arranged for in that understanding when it was made were all the phases of transportation and operation counted on in this indictment, the original agreement constituted the single

offense of conspiracy when it was reached and when the first overt act thereunder took place—it remained so thereafter and is punishable only as such.

The question presented in the case at bar is not like that presented in the *Blockburger* and *Albrecht* cases, but is more nearly like that presented in cases involving larcenies. There it has been uniformly held that where several articles of property are stolen *at one and the same time* and at the *same* place, from several separate owners, while there may be as many *private* wrongs committed against private citizens as there were separate owner, as against the public such act was but *one offense or crime*. Cf. *People v. Israel*, 269 Ill. 284, 287; *Waters v. People*, 104 Ill. 544, 547; *State v. Emery*, 68 Vt. 109, 34 A. 432; *State v. Sampson*, 157 Iowa 257, 138 N. W. 473.

III.

IT HAS BEEN THE SETTLED RULE THAT MULTIPLICITY OF PURPOSES IN A CONSPIRACY DOES NOT CREATE SEVERAL CONSPIRACIES.

It has been settled by a number of decisions that a multiplicity of purposes in a conspiracy will not make a single conspiracy several.

In the case of *Frohwerk v. United States*, 249 U. S. 204, 210, the defendant advanced the contention, that inasmuch as the first count of the indictment there involved had attributed a multiplicity of purposes to the conspiracy charged, the count was duplicitous. Mr. Justice Holmes disposed of that contention in these words (p. 210):

“The conspiracy is the crime and that is one, however diverse its objects.”

In the case of *United States v. Manton* (C. C. A. 2), 107 F. (2d) 834, 838, the appellant contended that the

conspiracy count, stating many purposes to the conspiracy, was, for that reason, duplicitous. The court said:

"The conspiracy constitutes the offense *irrespective of the number or variety of objects which the conspiracy seeks to attain*, or whether any of the ultimate objects be attained or not." (Italics ours.)

The case of *Short v. United States* (C. C. A. 4) 91 F. (2d) 614, 622, was a conspiracy case involving the violation of a number of the Internal Revenue statutes. An extract from page 622 of the opinion illustrates the rule prevailing in the Fourth Circuit and is precisely in point:

"It is to be noted that the rule in case of prosecution for conspiracy to violate statutes is different from the rule applicable in prosecutions for violation of the statutes themselves. In the latter case, in the absence of circumstances giving rise to the doctrine of merger, there may be a separate prosecution for each of the statutes violated without any splitting of offenses; for each of the statutory crimes involves a different element. In the case of conspiracy, however, the gist of the crime is the unlawful agreement, or partnership in criminal purposes thereby created; and one conspiracy does not become several because it may incidentally involve the violation of several statutes. As said by Judge Grubb, speaking for the Circuit Court of Appeals of the Fifth Circuit in *Norton v. United States* (C. C. A. 5th) 295 F. 136, 137: 'The fact that the conspiracy contemplated numerous violations of law as its object does not make the indictment duplicitous. The gist of the offense is the conspiracy, and it is single, though its object is to commit a number of crimes.' And the rule against splitting a conspiracy for purposes of prosecution was thus stated by Judge Lindley in *United States v. Weiss* (D. C.) 293 F. 992, 994: 'At the threshold it must be noted that the government cannot split up one conspiracy into different indictments, and prosecute all of them, but that prosecution for any part of a single crime bars any further prosecution based upon the whole or a part of the

same crime. *Murphy v. U. S.* (8 C. A.) 285 F. 801, 804, at page 816; *In re Snow*, 120 U. S. 274, 7 S. Ct. 556, 30 L. Ed. 658; 16 Corpus Juris, 270, and cases there cited.' "

In the case of *Powe v. United States*, 11 F. (2d) 598, 599, the Fifth Circuit Court of Appeals stated the proposition bluntly. The court said, page 599:

"The government cannot split up one conspiracy and make several conspiracies out of it."

Two decisions in the Seventh Circuit Court of Appeals are precisely in point. They are peculiarly applicable to the merits of this case, because this petitioner was taken out of the Seventh Circuit, where some of the overt acts complained of in this indictment took place, and tried in the Sixth Circuit, where a rule would seem to prevail which is contrary to that of the Seventh Circuit.

In the case of *Miller v. United States* (C. C. A. 7) 4 F. (2d) 228 (*cert. denied*, 268 U. S. 692), Miller was tried and convicted under two indictments, consolidated by agreement for trial. The first indictment contained two counts, each charging Miller and others with conspiring to commit an offense against the United States. The second indictment charged the substantive offenses and contained four counts: (1) unlawfully removing no-tax-paid alcohol from a government warehouse; (2) aiding and abetting others in such removal; (3) transporting distilled spirits without a permit; and (4) breaking open the lock of a bonded warehouse. Miller was convicted on all counts of both indictments except Count 4 of the second, upon which he was acquitted. His sentence was as follows: Two years and a fine on the first conspiracy count; two years and a fine on the second conspiracy count; three years on Counts 1 and 2 of the second indictment; a fine on Count 3 of the second indictment—the imprisonment terms to run consecutively. The first count of the conspiracy

indictment charged as the object of the conspiracy, the illegal transportation of alcohol; the second count of the conspiracy indictment charged the aiding and abetting in the removal of spirits from a government warehouse, no tax having been paid. It will be observed that two separate purposes were stated in the two separate counts, and it may be assumed that the evidence fully sustained conviction on both counts. The Circuit Court of Appeals eliminated the sentence on Count 1 of the conspiracy indictment and said:

"It is contended that the two counts are for the same offense, and that in any event the evidence does not warrant separate cumulative penalties under these counts. That there was a conspiracy between Miller and others to steal or aid in stealing and removing from the warehouse this large quantity of alcohol, there is, under the record, no shadow of doubt. Stealing the alcohol naturally involved the seizing of it where it was and transporting it elsewhere. While such acts might be prosecuted and punished separately, if under different statutes defining and penalizing the several acts, *a single conspiracy, if covering the entire transaction, may not be split up into a plurality of offenses.* *Murphy v. United States*, (C. C. A.) 285 F. 801. There was here no proof of a conspiracy, save as it would of necessity be drawn from the concert of action between Miller and the others. In the very nature of things, this would not have occurred without prior understanding and confederation between them as to the purpose and the plan of its execution. A state of facts might appear, showing a conspiracy to remove the alcohol and a separate independent conspiracy to transport it; but there is nothing in the evidence which warrants the conclusion that there were here two separate conspiracies—one for Miller to transport industrial alcohol, and the other for Miller to aid and abet in the removal from the warehouse of the alcohol." (Italics ours.)

In the case of *Murphy v. United States* (C. C. A. 7) 285 Fed. 801, 817, the court held that in the case of a conspiracy among individuals to rob a mail truck, there could not reasonably be separate convictions for (1) conspiracy to hold up and rob the truck, and (2) conspiracy to have and conceal stolen property, even though two separate substantive offenses were created by those statutes which were severally alleged as the objects of the two conspiracies. In the *Murphy* case the court reached its conclusion on consideration of Murphy's petition for rehearing and modified the sentence inflicted on Murphy accordingly. The court said (p. 817):

"It may be admitted that separate conspiracies may be thus formed, to effectuate which different plans involving perhaps different conspirators are formulated. We need not decide any such imaginary case, but content ourselves with a decision applicable to the facts in this case. The evidence leaves no room for legitimate discussion. It conclusively establishes but one conspiracy. There was no separate conspiracy to have and to conceal the stolen property, and no evidence tending to show such separate combination.

"The Fifth Amendment to the Constitution protects all against double punishment for the same offense. Its enforcement and its application demand a test which is a practical, not a theoretical one. It is the evidence, and not the theory of the pleader, to which we must look to determine this issue. And it is needless to add that one accused of crime, regardless of kind or magnitude of the offense, is entitled to the protection of this section of the Constitution. The sentence on this count therefore cannot be sustained." (Italics ours.)

In the case of *United States v. Anderson* (C. C. A. 7) 101 F. (2d) 325, 333, where this point was raised by the appellants, the court held that though the objects therein complained of might have differed, there was but one conspiracy. The court said (p. 333):

"This does not mean that both indictments were not

properly pleaded, as a precautionary matter, but we cannot believe that Congress intended to permit the accumulation of sentences upon diverse objects of a conspiracy where there was but one conspiracy and the evidence supporting each was precisely the same."

IV.

CASES REFERRED TO IN OPINION BELOW DISTINGUISHED.

The opinion of the Circuit Court cites and relies upon the following cases: *Blockburger v. United States*, 284 U. S. 299, 304; *Albrecht v. United States*, 273 U. S. 1, 11; *Parmenter v. United States* (C. C. A. 6), 2 F. (2d) 945, 946; *Fleisher v. United States* (C. C. A. 6), 91 F. (2d) 404; *Meyers v. United States* (C. C. A. 6), 94 F. (2d) 433; *Telman v. United States* (C. C. A. 10), 67 F. (2d) 716; *Yenichi Ito v. United States* (C. C. A. 9), 64 F. (2d) 73, 77.

We have already shown why the principle stated in the *Blockburger* and *Albrecht* cases is inapplicable in this particular case. The fundamental inquiry in both the *Blockburger* and *Albrecht* cases was an inquiry into the nature of the substantive offense as defined by the particular statute or statutes, i. e., whether or not Congress intended to interdict separately, distinct, though closely connected, steps in a given transaction. Obviously, where it is apparent from the text of the statute that Congress intended to punish distinct, though closely connected steps in a given transaction, a single occurrence might well constitute several separate offenses. However, in the light of the text of the federal conspiracy statute and the decisions thereunder since its enactment, there can be no contention that Congress intended to punish a conspiracy according to the number of its purposes.

In the *Parmenter* case (C. C. A. 6), 2 F. (2d) 945, the question of double prosecution and double punishment was suggested to the Sixth Circuit Court by the appellant in

that case. The court, as then constituted, *examined the evidence* in the light of appellant's contention and concluded *from the evidence* that the proof was not "conclusive that the plan to take it [contraband] from the shore to the warehouse was part of the plan to bring it to the shore." (2 F. (2d) 945, 946.) In other words, the court held that on the evidence submitted in that case, the conspiracies for which appellant had been prosecuted and convicted were *in fact* several and not single.

In the *Tetman* case (C. C. A. 10), 67 F. (2d) 716, the question of double punishment seems not to have been suggested by appellant's counsel or considered by the court, and the extent of the sentence does not appear from the reported opinion.

In the *Yenkichi* case (C. C. A. 9), 64 F. (2d) 73, while the question of double punishment was there suggested by the appellant, the Circuit Court of Appeals very properly held that the question was academic, because the sentence inflicted on both counts in that case had been ordered to run *concurrently*. The appellant was therefore not prejudiced.

The decision of the Circuit Court of Appeals in this case, and in the case of *Meyers v. United States*, 94 F. (2d) 433, follows and applies earlier observations made by the court in the case of *Fleisher v. United States*, 91 F. (2d) 404, 406. As a matter of fact, at the opening of the trial in this case the Assistant District Attorney advised the trial court, in opposition to petitioner's motion to require the Government to elect on what count it would proceed, that: "We are relying upon the authority of the *Fleisher* case in this district" (R. 47).

The *Fleisher* case was a decision in respect of a *pleading only*. No evidence had been preserved and transmitted to the reviewing court. That was highly important because, in the absence of evidence preserved in a record, the court

was obliged, after conviction, to assume on review, as it stated in the opinion (p. 496):

"That testimony was offered showing the existence of four separate conspiracies."

The memorandum for the United States filed in respect of the petition for writ of certiorari in the case at bar suggests (pp. 11-12) additional distinguishing circumstances for the *Fleisher* case based upon an examination of the briefs filed.

The same memorandum refers to decisions in the Circuit Courts of Appeals for the Eighth, Ninth and Tenth Circuits, viz., *Beddow v. United States*, 70 F. (2d) 674, 676 (C. C. A. 8); *Thomas v. United States*, 156 Fed. 897, 912-913 (C. C. A. 8); *Vlassis v. United States*, 3 F. (2d) 905, 906, (C. C. A. 9), and *Piquett v. United States*, 81 F. (2d) 75, 78-80.

In the *Beddow* case, aside from a reference to the *Blockbarger* and *Albrecht* cases, the reported facts are said to suggest a factual basis for regarding the conspiracies charged as consecutive and separate and not continuous and single.

In the *Thomas* case, in the light of the reversal of the conviction for erroneous instructions, the reported discussion was *obiter dictum*.

In the *Vlassis* case the discussion is limited and meager.

In the *Piquett* case the Circuit Court of Appeals believed the evidence to involve consecutive conspiracies and not one continuous conspiracy (p. 80).

It is not here contended that a prosecutor may not plead as many different conspiracies as he wishes. As the Seventh Circuit Court of Appeals suggests, he may do this "as a precautionary matter." *United States v. Anderson*, 101 F. (2d) 325, 333. But the theory of the pleader is not the test.

We submit that the true rule would be this: that whether a given case constitutes a single and continuous conspiracy,

or consecutive and separate conspiracies, is, in each particular case, a question of fact controlled by reference to the number of agreements made, and by what is claimed for the evidence in that respect, and is not controlled by the number of purposes present. See *People v. Silverman*, 281 N. Y. 457; 24 N. E. (2d) 124.

We submit further, *that in the instant case*, where the several counts of the indictment were conceded by the Government at the trial to charge the illegal objects of *one continuing conspiracy, that where the proof disclosed but one such conspiracy, that where the case was submitted to the jury on that theory only*, the jury necessarily found *only* that the petitioner was guilty of participation in a single conspiracy. Punishment, therefore, to be lawful, can only be on a basis compatible with the theory of the case as tried.

CONCLUSION.

The judgment of the Circuit Court of Appeals disregards the conception of the case adhered to by the District Attorney and the trial court and affirms the sentence upon the theory of seven separate offenses—which is a theory which was not submitted to the jury and one upon which this petitioner has never been tried. It deprives petitioner of his liberty for a period of time without sanction in the law; it subjects him to double and fourfold punishment for but one offense.

It is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed and the case remanded to the District Court for appropriate re-sentence according to law.

Respectfully submitted,

JAMES J. MAGNER;

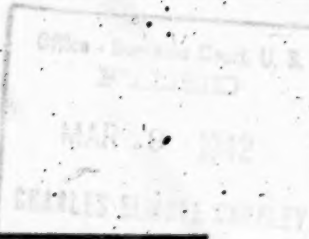
134 South La Salle Street,
Chicago, Illinois,

Attorney for Petitioner.

PRESTON BOYDEN,

Of Counsel.

FILE COPY



IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No. 1028 44

ALLEN WAINER,

Petitioner,

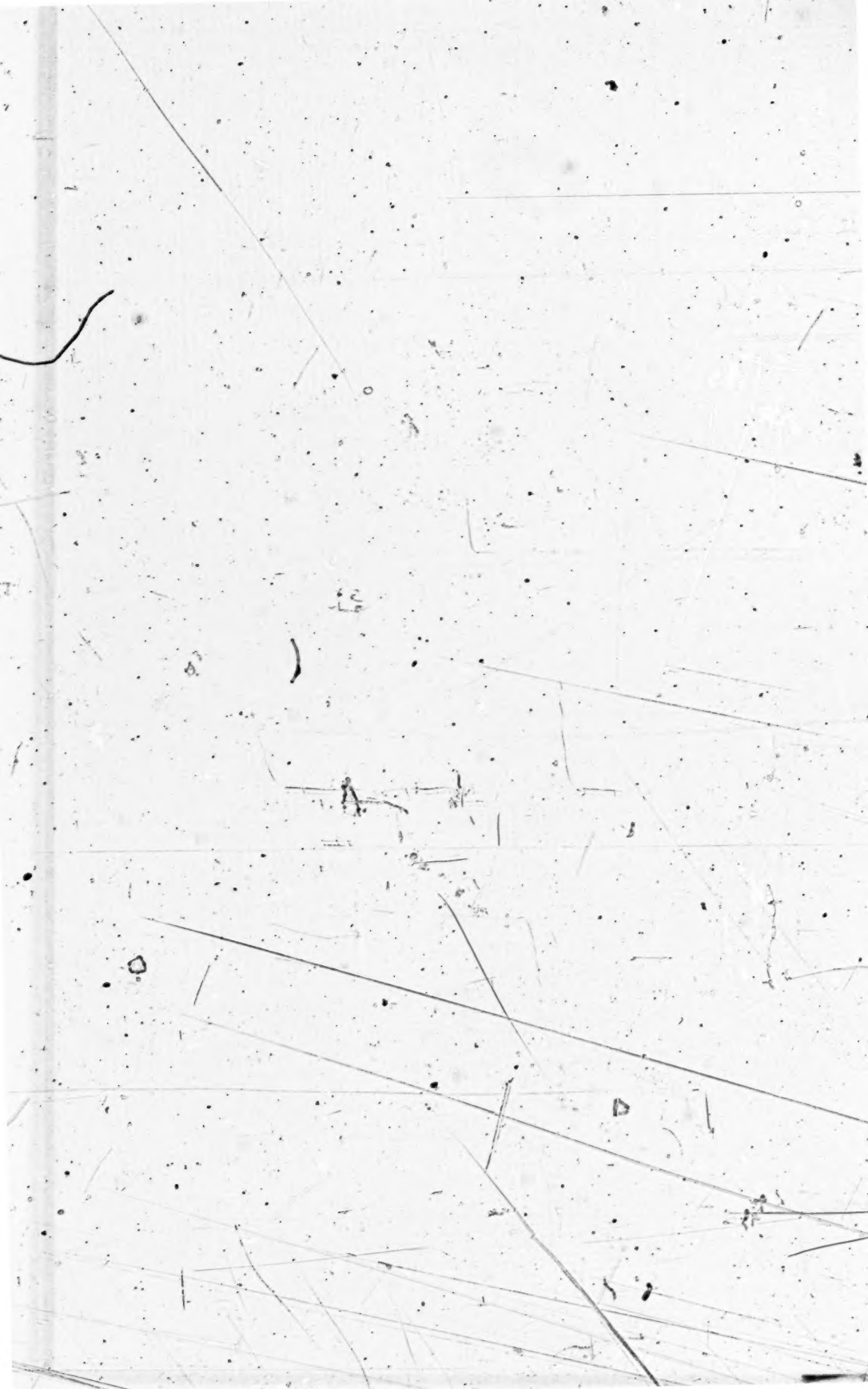
vs.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

JOHN E. DOUGHERTY,
Peoria, Illinois,

Counsel for Petitioner.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No. _____

ALLEN WAINER,

Petitioner.

vs.

UNITED STATES OF AMERICA.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT.**

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Your Petitioner, Allen Wainer, respectfully prays that a writ of certiorari issue to review a decision of the Circuit Court of Appeals for the Sixth Circuit affirming the conviction of your Petitioner in the United States District Court for the Eastern District of Michigan, Southern Division.

I.

SHORT STATEMENT OF THE CASE.

Your Petitioner, together with others, was indicted in the District Court as aforesaid on an indictment returned December 19, 1939. The indictment consisted of seven counts, each count charging a conspiracy to commit an

offense against the United States, in violation of Section 37 of the Criminal Code, U. S. C. A., Title 18, Section 88. Count One (R. 1-7) charged the conspiracy unlawfully to carry on the business of wholesale and retail liquor dealers without having the special occupational tax stamps as required by law; Two, (R. 7-12) unlawfully to possess distilled spirits, the immediate containers thereof not having affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payments of all Internal Revenue taxes imposed on such spirits; Three, (R. 12-15) unlawfully to transport large quantities of distilled spirits, the immediate containers not having affixed thereto the required stamps; Four, (R. 15-18) unlawfully to carry on the business of distillers without having given bond as required by law; Five, (R. 18-21), unlawfully to remove, deposit and conceal distilled spirits in respect whereof a tax was imposed by law; Six; (R. 21-24) unlawfully to set up and possess unregistered stills and distilling apparatus, and Seven (R. 24-26) unlawfully to make and ferment mash fit for distillation on unauthorized premises.

Your Petitioner, together with some other defendants, plea^d not guilty and stood trial. Some defendants plead guilty and testified on behalf of the Government. At the trial the Government introduced the testimony of Henry S. Scampo (R. 67), a co-defendant who had pleaded guilty, that he contacted the Petitioner at either Wyandotte or Detroit, Michigan, in the spring of 1936; that Wainer offered to sell he and his partner (R. 68) Clarence Dracka, alcohol. It was agreed that the shipments were to be boxed with so many cans to a box and sent over the Motor Freight Lines; that they, he and Dracka, received shipments for a period of two or three months in the spring of 1936 (R. 69); at the end of that time he had a telephone conversation with Wainer in which he said they wanted some more alcohol. Wainer was not able to get it and he, Wainer,

said he was quitting the business; he said he was all through.

Clarence Dracka, another co-defendant who had pleaded guilty, testified (R. 92) that he and Scampo received alcohol from Wainer in Chicago for a short period of six or eight weeks; that during this period he did not talk to Wainer, but that Wainer went to Wyandotte and talked to Scampo and him, at which time Wainer said he was through with the alcohol business; that he was not making any money; that he wanted to get out of it, and therefore could send no more.

Scampo further testified that he went to Chicago in the fall of 1936 and asked the Petitioner here if he, the Petitioner, could get him some alcohol, and the Petitioner said that he was entirely out of business and could not do him any good (R. 71). He then asked the Petitioner if he could help him get a warehouse and the Petitioner said that he would call a man at the warehouse and see if he could get him a room. The Petitioner made a statement (R. 384) and testified in his own behalf (R. 558). He testified (R. 559) that he sold alcohol to Scampo and Dracka on about three or four occasions in the months of May and June, 1936; that he saw them after that in Detroit and told them that he did not want to ship them any longer; that he was through with the business and had quit; that he had quit about the end of June, 1936, and that after that time he did not ship any alcohol to them or anyone else in Detroit or to anyone at any time or any place since the month of June, 1936; that he pleaded guilty to an indictment returned in the Northern District of Illinois at Chicago, Illinois about April 20th or 21st, 1937; that in that indictment he was charged with conspiring to commit an offense against the United States by violating the Internal Revenue Laws in regard to the sale of alcohol and was sentenced to a term of imprisonment of two years and six months; that he was

4

taken in custody at that time and entered the Federal Penitentiary at Atlanta, Georgia, in June, 1937; that he was admitted to parole (R. 559), served his parole, and was in the real estate business in Chicago.

There is no evidence of any kind or character in the record that either shows or tends to show that the Petitioner was in any way connected with the conspiracy charged or that he did anything in furtherance of it for more than three years prior to the return of the indictment herein.

At the close of the Government's case (R. 462) a motion was made to require the Government to elect upon which counts of the indictment they intended to proceed and have the case submitted to the jury. The motion was overruled. A further motion was made for a directed verdict (R. 464) on the ground that the prosecution was barred by the Statute of Limitations. This motion was refused. A further motion was made on behalf of the Petitioner that there be a directed verdict in his behalf (R. 475-476-477-478-479-480-481) upon the grounds of former jeopardy. This motion was also refused. Exceptions were preserved in all cases. Upon the finding of guilty herein the Court sentenced your Petitioner to be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a penitentiary for and during the term and period of eight years and to pay a fine in the sum of Two Thousand Dollars (\$2,000.00) (R. 45).

II.

**STATEMENT OF MATTERS INVOLVED AND THE GROUNDS
RELIED UPON FOR GRANTING OF WRIT OF CERTIORARI.**

The discretionary power of this Court to grant a writ of certiorari is invoked on the following grounds:

1. There is a conflict of opinion in the various Circuit Courts of the United States as to whether the Congress intended to permit the accumulation of sentences upon diverse objects of a conspiracy, and the holding of the Court below in the instant case is specifically at variance with the decisions of the Circuit Courts of Appeal for the Second, Fifth, Seventh and Eighth Circuits. In the case of *United States v. Manton*, 107 F. (2d) 834-838, the Circuit Court of Appeals for the Second Circuit said:

"The conspiracy constitutes the offense irrespective of the number or variety of objects which the conspiracy seeks to attain or whether any of the ultimate objects be attained or not."

In the case of *Powe v. United States*, 11 F. (2d) 598-599, the Fifth Circuit Court of Appeals said:

"The Government cannot split up one conspiracy and make several conspiracies out of it."

Again, in *Norton v. United States*, 295 F. 136-137, the same Circuit Court said:

"The fact that the conspiracy contemplated numerous violations of law as its object does not make the indictment duplicitous. The gist of the offense is the conspiracy and it is single, though its object is to commit a number of crimes."

In the Seventh Circuit, that Court in *Murphy v. United States*, 285 F. 801, held that separate cumulative penalties under separate counts of a conspiracy indictment could not be imposed. The same Circuit Court of Appeals in the case of *Miller v. United States*, 4 F. (2d) 228, (cert. den, 268

U. S. 692) again held this to be the law. The same Circuit Court in the case of *United States v. Anderson*, 101 F. (2d) 325-333, said:

"While it was alright for the Government to plead separate offenses in conspiracy counts as a precautionary matter, we cannot believe that Congress intended to permit the accumulation of sentences upon diverse objects of a conspiracy where there was but one conspiracy and the evidence supporting each was precisely the same."

In the case of *Ex parte Rose*, District Court Western District of Missouri, Eighth Circuit, 33 Fed. Supp. 941, the District Court there discharged a petitioner on a writ of habeas corpus who had been sentenced to serve two cumulative sentences on two counts of a conspiracy indictment. On the other hand, the Circuit Court of Appeals for the Tenth Circuit, in *Telman v. United States*, 67 F. (2d) 716, and the Ninth Circuit Court of Appeals in *Yenkichi Ito v. United States*, 64 F. (2d) 73-77, held the law to be as stated by the Circuit Court of Appeals for the Sixth Circuit.

2. The decision of the Court below that the Statute of Limitations raises no bar to the prosecution of the instant case and that the limitation period is by the plain language of the Statute six years and not three years, and that the trial court was under no duty to submit this question to the jury is in conflict with the decisions of this Court in *United States v. Noveck*, 271 U. S. 201; *United States v. McElvin*, 272 U. S. 633; and *United States v. Scharton*, 285 U. S. 518.

By sustaining the conviction of this Petitioner and failing to sustain his plea of former jeopardy this Court came into express conflict with the holding in *Short, et al. v. United States*, 91 F. (2d) 614; C. C. A. 4.

WHEREFORE, your Petitioner prays that a writ of certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and

complete transcript of the record and of the proceedings of the said Circuit Court had in the case numbered and entitled on its docket, "No. 8714, Harry Braverman and Allen Wainer, Appellants, *vs.* the United States of America, Appellee" to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States, and the judgment herein of said Circuit Court be reversed by the Court, and for such other relief as to the Court may seem proper.

ALLEN WAINER,

By: JOHN E. DOUGHERTY,
His Attorney.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Sixth Circuit (not yet reported) appears in full in the record (R. 690). No formal opinion was rendered by the District Court.

II.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, Section 347, Title 28; U. S. C. A.

The judgment of the Circuit Court of Appeals for the Sixth Circuit sought to be reviewed was entered on January 14, 1942 (R. 689).

Petitioner's application for rehearing was filed February 6, 1942 (R. 699) and was denied by the Circuit Court of Appeals February 10, 1942 (R. 703).

III.

STATEMENT OF CASE.

A statement of the case having been made in the Petition for the Writ of Certiorari, it is omitted here for the sake of brevity.

IV.

SPECIFICATIONS OF ERROR.

1. The Circuit Court of Appeals erred in sustaining the imposing of one general sentence of eight years imprisonment and a fine of Two Thousand Dollars (\$2,000.00) herein.

2. The Circuit Court of Appeals erred in holding that the Statute of Limitations raises no bar to the prosecution of the instant case and that the limitation period is six years and not three years, and that the trial court was under no duty to submit this question to the jury.

3. The Circuit Court of Appeals erred in sustaining the refusal to instruct the jury as to the effect of the evidence indicating abandonment of the conspiracy for more than three years prior to the return of the indictment.

4. The Circuit Court of Appeals erred in failing to sustain your Petitioner's plea of former jeopardy.

ARGUMENT.

We most respectfully contend that it was error to impose one general sentence of eight years imprisonment and a fine of Two Thousand Dollars (\$2,000.00) herein because under no view of the evidence was there presented more than one conspiracy. That was the theory of the Government when the case was tried and the theory upon which the jury was charged, that the offense herein constituted one conspiracy. The District Attorney who tried the case stated (R. 470):

"The conspiracy is one, as to time and place and as to all the parties named in the indictment; that is our theory."

The trial court during the course of the trial apparently adopted that theory, as is shown on the Record, page 275:

Question: The indictment charges seven conspiracies.

The Court: Well, let's settle that. That is an extravagant statement. You claim there are seven conspiracies?

Mr. Frederick (defense counsel): Set up in seven separate counts. Each count sets up a conspiracy, yes, your Honor, seven counts. Each count sets up a conspiracy.

The Court: Is that right?

Mr. Hopping (Assistant District Attorney): I would not say that that was, your Honor. It is one count—

The Court: Well, never mind.

Mr. Hopping: One conspiracy indictment and seven counts charging seven illegal objects of the conspiracy.

In charging the jury the trial judge (R. 626-627) charged:

"The Government claims in this case that this was a continuing conspiracy."

We respectfully insist that taking all of the evidence of the Government in its most favorable light only one con-

spiracy was shown and that under no theory of the law could a sentence of more than two years imprisonment and a fine have been imposed. As for the evidence that it was always the Government's contention that this was a single conspiracy a request to charge on the question as to whether there were several different conspiracies was refused (R. 40) (this request was joined in by Petitioner's counsel, R. 644); and the court charged this was to be treated as one conspiracy continuous in character (R. 626).

There can be no question, of course, but that a conspiracy may have a multiplicity of purposes. However, Mr. Justice Holmes stated in *Frohwerk v. United States*, 249 U. S. 204-210:

"The conspiracy is the crime and that is one however diverse its objects."

That theory of law has been adopted in the Second, Fifth, Seventh and Eighth Circuits and we respectfully submit that it should be adopted in the Sixth Circuit.

Mr. Justice Sutherland, in the case of *United States v. Manton*, 107 F. (2d) 834-838, in his opinion in that case stated:

"The conspiracy constitutes the offense irrespective of the number or variety of objects which the conspiracy seeks to attain or whether any of the ultimate objects be attained or not."

A similar conclusion was reached in *Powe v. United States*, Fifth Circuit, 11 F. (2d) 598. In that case there was an overlapping of periods, whereas in this case the time of the alleged conspiracies from the beginning to the termination were identical. In the *Powe* case the court said:

"The first count of the indictment in this case charges a conspiracy to commit a single offense which is included within the continuing conspiracy charged in the second count. According to the testimony it was one general continuing conspiracy to commit a number of offenses and no separate conspiracy to com-

mit a single offense. The Government cannot split up one conspiracy and make several conspiracies out of it."

In the case of *Miller v. United States*, 4 F. (2d) 228-230, the Seventh Circuit Court of Appeals, in discussing an almost identical situation with the one before the court said:

"It is contended that the two counts are for the same offense and that in any event the evidence does not warrant separate cumulative penalties under these counts. That there was a conspiracy between Miller and others to steal or aid in stealing and removing from the warehouse this large quantity of alcohol, there is under the record, no shadow of doubt. Stealing the alcohol naturally involved the seizing of it where it was and transporting it elsewhere. While such acts might be prosecuted and punished separately if under different statutes defining and penalizing the several acts, a single conspiracy if covering the entire transaction may not be split up into a plurality of offenses."

and cited *Murphy v. United States*, Seventh Circuit, 285 F. 801.

In the *Murphy* case the court held that in the case of a conspiracy to rob a mail truck there could not reasonably be separate convictions for conspiracy to hold up and rob the truck and for conspiracy to have and conceal stolen property, *even though two separate substantive offenses were created by those statutes which were severally alleged as the objects of the two conspiracies*. The court reached its conclusions in that case on consideration of the petition for rehearing and modified the sentence inflicted on *Murphy* accordingly. Judge Evans said (p. 817):

"It may be admitted that separate conspiracies may be thus formed, to effectuate which different plans involving perhaps different conspirators are formulated. We need not decide any such imaginary case, but content ourselves with a decision applicable to the facts in this case. The evidence leaves no room for

legitimate discussion. It conclusively establishes but one conspiracy. There was no separate conspiracy to have and to conceal the stolen property, and no evidence tending to show such separate combination.

"The Fifth Amendment to the Constitution protects all against double punishment for the same offense. Its enforcement and its application demand a test which is a practical, not a theoretical one. It is the evidence, and not the theory of the pleader, to which we must look to determine this issue. And it is needless to add that one accused of crime, regardless of kind or magnitude of the offense, is entitled to the protection of this section of the Constitution. The sentence on this count therefore cannot be sustained."

Again, in the case of *United States v. Anderson*, 101 F. (2d) 325-333, the Seventh Circuit Court of Appeals again had before it the question here considered. While the court said it was alright for the Government to plead separate offenses in conspiracy counts "as a precautionary matter, but we cannot believe that Congress intended to permit the accumulation of sentences upon diverse objects of a conspiracy, where there was but one conspiracy and the evidence supporting each was precisely the same."

In the Eighth Circuit, in the case *Ex parte Rose*, 33 Fed. Supp. 941, which came before the court on a petition for a writ of habeas corpus, the petition setting out that the petitioner was sentenced for a period of two years on each of two counts of an indictment, to run consecutively, whereas each count covered and was for an identical offense, and that he had now served more than two years of his sentence. Each count charged a conspiracy; count one to unlawfully remove, deposit and conceal and be concerned in the removing, depositing and concealing of goods and commodities for and in respect whereof any tax is imposed, with intent to defraud the United States of the tax imposed thereon, and the second count, that he conspired to possess certain distilled spirits, to-wit, large quantities of alcohol, the immediate containers of which did not have affixed

thereto any stamp or stamps, etc. The writ was allowed and the petitioner discharged. In the instant case every count of the indictment is identical as to time, place and persons, the only difference in the counts being that they charge a different object of conspiracy.

2. The Statute of Limitations.

We desire to call to the court's attention that in each count of this indictment the conspiracy is charged to commit an offense against the United States and not to defraud the United States.

The period of limitation for prosecution in the instant case is fixed by Title 18, Sec. 3748, as amended on June 6, 1932. By the language of this enactment the general limitation for prosecutions under the Internal Revenue Laws is fixed at three years, subject to several exceptions. These exceptions are: (1) for offenses involving the defrauding or attempt to defraud the United States by conspiracy or not, (2) for offenses of wilfully attempting any manner to evade or defeat a tax, (3) for acts relating to income tax returns, and finally (4) for conspiracy, where the object thereof is wilfully to evade or defeat any tax or the payment thereof. As to offenses falling within the exceptions, the period of limitation is fixed at six years.

The last proviso or excepting clause was apparently added to conform to the decision of the United States Supreme Court in the case of *United States v. Scharton*, 285 U. S. 518, which held that such excepting provisions were to be narrowly construed.

The court in this case refused to read into the language of the statute an attempt to defeat or evade the payment of a tax as an offense included within the language of defrauding or attempting to defraud the United States.

This, and prior decisions of the same court, interpreting like sections, clearly demonstrate that in determining the

period of limitation to be applied to prosecutions for conspiracy to violate various sections of the Internal Revenue laws, reference must be had to the substantive offense. Unless the substantive offense contains as an ingredient, one of the exceptions provided for, the general period of limitation applies.

Thus did the court so declare itself in this language:

"As said in the Noveck case, statutes will not be read as creating crimes or classes of crimes unless clearly so intended, and obviously we are here concerned with one meant only to fix periods of limitation. Moreover, the concluding clause of the section, though denominated a proviso, is an excepting clause and therefore to be narrowly construed. *McElvain v. U. S.*, 272 U. S. 633. And as the section has to do with statutory crimes it is to be liberally interpreted in favor of repose, and ought not to be extended by construction to embrace so-called frauds not so denominated by the Statutes Creating Offenses. *U. S. v. Hirsch*, 100 U. S. 33, *U. S. v. Rabinowich*, 238 U. S. 78, *U. S. v. Noveck*, 271 U. S. 201. The purpose of the proviso is to apply the 6 year period to cases in which defrauding or an attempt to defraud the U. S. is an ingredient under the statute defining the offense." *U. S. v. Noveck (supra)*.

With equal vehemence may we urge, in reading the added section applicable to prosecutions for conspiracy to defeat or evade the tax that it applies to cases in which this "is an ingredient under the statute defining the offense."

In the light of the law referred to, it therefore becomes patent that the period of limitation is three years.

Upon the trial, a claim of the running of the statute of limitations was made as to the Petitioner. This was done upon motion made at the conclusion of the Government's case and again in the form of requests to charge 8, 9 and

10. (R. 40.) All such motions were denied by the trial court. Inasmuch as a general verdict of guilt was rendered and a general sentence imposed, it is obvious that such error upon the part of the court was prejudicial to their rights. The record clearly discloses that the petitioner herein made his last shipment of alcohol on or about July 24, 1936 (R. 88, 89, 224) and refused to have anything more to do with the conspiracy here charged.

In the case of *United States v. McElvain*, 272 U. S. 633, this Court held the proviso to U. S. Revised Statutes 1044 fixing the limitation period for prosecution of offenses against the United States does not extend to offenses not covered by the section, and therefore does not apply to conspiracies to defraud the United States in respect to its Internal Revenue prosecuted under Section 37 of the Criminal Code.

4. Plea of former jeopardy should have been sustained.

On the trial of this case this Petitioner filed a plea of former jeopardy (R. 475) and in that plea set out that he was indicted at the November Term, 1936, in the United States District Court at Chicago, Illinois, charged among other things with the conspiracy to violate the same laws at Chicago and elsewhere that this indictment charged him with, and that he entered a plea of guilty to that indictment and was sentenced to serve a term of two years and six months in the United States Penitentiary, which he served. We respectfully call the Court's attention to the indictment in the instant case and in every count of the present indictment it is charged that he conspired, among other places, at Chicago, Illinois, during the same time that he was charged by the indictment returned by the Grand Jury at Chicago. The Court overruled that motion. We believe that he should have had the benefit of it and that the laws laid down in the Fourth Circuit Court of Appeals

in *Short, et al. v. United States*, 91 F. (2d) 614, should apply. In that case the Court said:

"Blanket charges of 'continuing' conspiracy with named defendants and with 'other persons to the grand jurors unknown' fulfil a useful purpose in the prosecution of crime, but they must not be used in such a way as to contravene constitutional guaranties. If the government sees fit to send an indictment in this general form charging a continuing conspiracy for a period of time, it must do so with the understanding that upon conviction or acquittal further prosecution of that conspiracy during the period charged is barred, and that this result cannot be avoided by charging the conspiracy to have been formed in another district where overt acts in furtherance of it were committed, or by charging different overt acts as having been committed in furtherance of it, or by charging additional objects or the violation of additional statutes as within its purview, if in fact the second indictment involves substantially the same conspiracy as the first."

CONCLUSION.

It is submitted that for the reasons stated the writ of certiorari should be granted.

Respectfully submitted,

JOHN E. DOUGHERTY,
Peoria, Illinois,

Attorney for Allen Wainer,
Petitioner.

APPENDIX.

1. Sec. 88, Title 18, U. S. C. A.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

2. Chapter 36, Sec. 3748, U. S. C. A., Periods of limitation.

(a) Criminal prosecutions. No person shall be prosecuted, tried, or punished, for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offence, except that the period of limitation shall be six years—

(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner,

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, and

(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document).

For offenses arising under section 37 of the Criminal

Code, March 4, 1909/ 35 Stat. 1096 (U. S. C., Title 18, Sec. 88), where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years. The time during which the person committing any of the offenses above mentioned is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings. Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district.



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CHARLES ELMORE GOSLEY
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1942.

No. 1028 44

ALLEN WAINER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

**BRIEF AND ARGUMENT FOR APPELLANT,
ALLEN WAINER.**

✓ JOHN E. DOUGHERTY,

Peoria, Illinois,

Counsel for Appellant.

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IN THE
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OCTOBER TERM, 1942.

No. 1028

ALLEN WAINER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF AND ARGUMENT FOR APPELLANT.

MAY IT PLEASE THE COURT:

On December 19th, 1939, a conspiracy indictment in seven counts was returned against the Appellant and thirty others in the District Court for the Eastern District of Michigan (R. 1-26). The allegations of each count are alike as to parties, times and places of entry into and duration of the conspiracy. Each count charges that the conspiracy therein alleged was to commit a particular offense against the internal revenue laws, viz: Count 1 (R. 1-7), unlawfully to carry on the business of wholesale and retail liquor dealers without having the special occupational tax stamp as required by law; Count 2 (R. 7-12), unlawfully to possess distilled spirits, the immediate containers thereof not having affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payments of all internal revenue taxes imposed on such spirits; Count 3 (R. 12-15), unlawfully to transport large quantities of distilled spirits, the immediate containers thereof not

having affixed thereto the required stamps; Count 4 (R. 15-18), unlawfully to carry on the business of distillers without having given bond as required by law and with intent to defraud the Government of the tax on the spirits which would be distilled; Count 5 (R. 18-21), unlawfully to remove, deposit and conceal distilled spirits in respect whereof a tax was imposed by law with intent to defraud the United States of such tax; Count 6 (R. 21-24), unlawfully to possess, keep in custody, control and set up unregistered stills and distilling apparatus; and Count 7 (R. 24-26), unlawfully to make and ferment mash fit for the production of distilled spirits on premises not duly authorized and designated according to law as a distillery.

Appellant, together with some other defendants, plead not guilty and stood trial. Some defendants plead guilty and testified on behalf of the Government. At the trial the Government introduced the testimony of Henry S. Scampo (R. 67), a co-defendant who had pleaded guilty, that he contacted the Petitioner at either Wyandotte or Detroit, Michigan, in the spring of 1936; that Wainer offered to sell him and his partner (R. 68), Clarence Dracka, alcohol. It was agreed that the shipments were to be boxed with so many cans to a box and sent over the Motor Freight Lines; that they, he and Dracka, received shipments for a period of two or three months in the spring of 1936 (R. 69); at the end of that time he had a telephone conversation with Wainer in which he said they wanted some more alcohol. Wainer was not able to get it and he, Wainer, said he was quitting the business; he said he was all through.

Clarence Dracka, another co-defendant who had pleaded guilty, testified (R. 92) that he and Scampo received alcohol from Wainer in Chicago for a short period of six or eight weeks; that during this period he did not talk to Wainer, but that Wainer went to Wyandotte and talked to Scampo and him, at which time Wainer said he was

through with the alcohol business; that he was not making any money; that he wanted to get out of it, and therefore could send no more.

Scampo further testified that he went to Chicago in the fall of 1936 and asked the Appellant here if he, the Appellant, could get him some alcohol, and the Appellant said that he was entirely out of business and could not do him any good (R. 71). He then asked the Appellant if he could help him get a warehouse and the Appellant said he would call a man at the warehouse and see if he could get him a room. The Appellant made a statement (R. 384) and testified in his own behalf (R. 558). He testified (R. 559) that he sold alcohol to Scampo and Dracka on about three or four occasions in the months of May and June, 1936; that he saw them after that in Detroit and told them that he did not want to ship them any longer; that he was through with the business and had quit; that he had quit about the end of June, 1936, and that after that time he did not ship any alcohol to them or anyone else in Detroit or to anyone at any time or any place since the month of June, 1936; that he pleaded guilty to an indictment returned in the Northern District of Illinois at Chicago, Illinois, about April 20th or 21st, 1937; that in that indictment he was charged with conspiring to commit an offense against the United States by violating the Internal Revenue Laws in regard to the sale of alcohol and was sentenced to a term of imprisonment of two years and six months; that he was taken in custody at that time and entered the Federal Penitentiary at Atlanta, Georgia, in June, 1937; that he was admitted to parole (R. 559), served his parole, and was in the real estate business in Chicago.

There is no evidence of any kind or character in the Record that either shows or tends to show that the Appellant was in any way connected with the conspiracy charged or that he did anything in furtherance of it for more than three years prior to the return of the indictment herein.

At the close of the Government's case (R. 462) a motion was made to require the Government to elect upon which counts of the indictment they intended to proceed and have the case submitted to the jury. The motion was overruled. A further motion was made for a directed verdict (R. 464) on the ground that the prosecution was barred by the Statute of Limitations. This motion was refused. A further motion was made on behalf of the Appellant that there be a directed verdict in his behalf (R. 475-476-477-478-479-480-481) upon the grounds of former jeopardy. This motion was also refused. Exceptions were preserved in all cases. Upon the finding of guilty herein the Court sentenced this Appellant to be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a penitentiary for and during the term and period of eight years and to pay a fine in the sum of Two Thousand Dollars (\$2,000.00), (R. 45).

SPECIFICATIONS OF ERROR.

1. The Circuit Court of Appeals erred in sustaining the imposing of one general sentence of eight years imprisonment and a fine of Two Thousand Dollars (\$2,000.00) herein.

2. The Circuit Court of Appeals erred in holding that the Statute of Limitations raises no bar to the prosecution of the instant case and that the limitation period is six years and not three years, and that the trial court was under no duty to submit this question to the jury.

3. The Circuit Court of Appeals erred in sustaining the refusal to instruct the jury as to the effect of the evidence indicating abandonment of the conspiracy for more than three years prior to the return of the indictment.

4. The Circuit Court of Appeals erred in failing to sustain this Appellant's plea of former jeopardy.

BRIEF OF AUTHORITIES.

The Circuit Court of Appeals erred in sustaining the imposing of one general sentence of eight years imprisonment and a fine of Two Thousand Dollars (\$2,000.00) in this case.

Frohwerk v. United States, 249 U. S. 204-210.

United States v. Manton, 107 F. (2d) 834-838.

Powe v. United States, 11 F. (2d) 598.

Miller v. United States, 4 F. (2d) 228-230.

Murphy v. United States, 285 F. 801.

Anderson v. United States, 101 F. (2d) 325-333.

Ex Parte Rose, 53 F. Supp. 941.

The Circuit Court of Appeals erred in holding that the Statute of Limitations raises no bar to the prosecution of the instant case and that the limitation period is six years and not three years, and that the trial court was under no duty to submit this question to the jury.

United States v. Scharton, 285 U. S. 518.

United States v. McElvain, 272 U. S. 633.

The Circuit Court of Appeals erred in sustaining the refusal to instruct the jury as to the effect of the evidence indicating abandonment of the conspiracy for more than three years prior to the return of the indictment.

United States v. Scharton, 285 U. S. 518.

United States v. McElvain, 272 U. S. 633.

The Circuit Court of Appeals erred in failing to sustain the Appellant's plea of former jeopardy.

Short v. United States, 91 F. (2d) 614.

ARGUMENT

We most respectfully contend that it was error to impose one general sentence of eight years imprisonment and a fine of Two Thousand Dollars (\$2,000.00) herein because under no view of the evidence was there presented more than one conspiracy. That was the theory of the Government when the case was tried and the theory upon which the jury was charged, that the offense herein constituted one conspiracy. The District Attorney who tried the case stated (R. 470):

"The conspiracy is one as to time and place and as to all the parties named in the indictment; that is our theory."

The trial court during the course of the trial apparently adopted that theory, as is shown, on the Record, page 275:

"Question: The indictment charges seven conspiracies.

The Court: Well, let's settle that. That is an extravagant statement. You claim there are seven conspiracies?

Mr. Frederick (defense counsel): Set up in seven separate counts. Each count sets up a conspiracy, yes, your Honor, seven counts. Each count sets up a conspiracy.

The Court: Is that right?

Mr. Hopping (Assistant District Attorney): I would not say that that was, your Honor. It is one count—

The Court: Well, never mind.

Mr. Hopping: One conspiracy indictment and seven counts charging seven illegal objects of the conspiracy."

In charging the jury the trial judge (R. 626-627) charged:

"The Government claims in this case that this was a continuing conspiracy."

We respectfully insist that taking all of the evidence of the Government in its favorable light only one conspiracy was shown and that under no theory of the law could a sentence of more than two years imprisonment and a fine have been imposed. As for the evidence that it was always the Government's contention that this was a single conspiracy a request to charge on the question as to whether there were several different conspiracies was refused (R. 40); (this request was joined in by Appellant's counsel, R. 644); and the court charged this was to be treated as one conspiracy continuous in character (R. 626).

There can be no question, of course, but that a conspiracy may have a multiplicity of purposes. However, Mr. Justice Holmes stated in *Frohwerk v. United States*, 249 U. S. 204-210:

"The conspiracy is the crime and that is one however diverse its objects."

That theory of law has been adopted in the Second, Fifth, Seventh and Eighth Circuits and we respectfully submit that it should be adopted as the law of the land.

Mr. Justice Sutherland, in the case of *United States v. Manton*, 107 F. (2d) 834-838, in his opinion in that case stated:

"The conspiracy constitutes the offense irrespective of the number or variety of objects which the conspiracy seeks to attain or whether any of the ultimate objects be attained or not."

A similar conclusion was reached in *Powe v. United States*, Fifth Circuit, 41 F. (2d) 598. In that case there was an overlapping of periods, whereas in this case the time of the alleged conspiracies from the beginning to the termination were identical. In the *Powe* case the court said:

"The first count of the indictment in this case charges a conspiracy to commit a single offense which is included within the continuing conspiracy charged in the second count. According to the testimony it

was one general continuing conspiracy to commit a number of offenses and no separate conspiracy to commit a single offense. The Government cannot split up one conspiracy and make several conspiracies out of it."

In the case of *Miller v. United States*, 4 F. (2d) 228-230, the Seventh Circuit Court of Appeals, in discussing an almost identical situation with the one before the court said:

"It is contended that the two counts are for the same offense and that in any event the evidence does not warrant separate cumulative penalties under these counts. That there was a conspiracy between Miller and others to steal or aid in stealing and removing from the warehouse this large quantity of alcohol, there is under the record, no shadow of doubt. Stealing the alcohol naturally involved the seizing of it where it was and transporting it elsewhere. While such acts might be prosecuted and punished separately if under different statutes defining and penalizing the several acts, a single conspiracy if covering the entire transaction may not be split up into a plurality of offenses."

and cited *Murphy v. United States*, Seventh Circuit, 285 F. 801.

In the *Murphy* case the court held that in the case of a conspiracy to rob a mail truck there could not reasonably be separate convictions for conspiracy to hold up and rob the truck and for conspiracy to have and conceal stolen property; even though two separate substantive offenses were created by those statutes which were severally alleged as the objects of the two conspiracies. The court reached its conclusions in that case on consideration of the petition for rehearing and modified the sentence inflicted on *Murphy* accordingly. Judge Evans said, (p. 817):

"It may be admitted that separate conspiracies may be thus formed, to effectuate which different plans involving perhaps different conspiracies are formu-

lated. We need not decide any such imaginary case, but content ourselves with a decision applicable to the facts in this case. The evidence leaves no room for legitimate discussion. It conclusively establishes but one conspiracy. There was no separate conspiracy to have and to conceal the stolen property, and no evidence tending to show such separate combination. •

“The Fifth Amendment to the Constitution protects all against double punishment for the same offense. Its enforcement and its application demand a test which is a practical, not a theoretical one. It is the evidence, and not the theory of the pleader, to which we must look to determine this issue. And it is needless to add that one accused of crime, regardless of kind or magnitude of the offense, is entitled to the protection of this section of the Constitution. The sentence on this count therefore cannot be sustained.”

Again, in the case of *United States v. Anderson*, 101 F. (2d) 325-333, the Seventh Circuit Court of Appeals again had before it the question here considered. While the court said it was alright for the Government to plead separate offenses in conspiracy counts “as a precautionary matter, but we cannot believe that Congress intended to permit the accumulation of sentences upon diverse objects of a conspiracy where there was but one conspiracy and the evidence supporting each was precisely the same.”

In the Eighth Circuit, in the case *Ex parte Rose*, 33 Fed. Supp. 941, which came before the court on a petition for a writ of habeas corpus, the petition setting out that the petitioner was sentenced for a period of two years on each of two counts of an indictment, to run consecutively, whereas each count covered and was for an identical offense, and that he had now served more than two years of his sentence. Each count charged a conspiracy; count one to unlawfully remove, deposit and conceal and be concerned in the removing, depositing and concealing of goods and commodities for and in respect whereof any tax is imposed, with intent to defraud the United States of the

tax imposed thereon, and the second count, that he conspired to possess certain distilled spirits, to-wit, large quantities of alcohol, the immediate containers of which did not have affixed thereto any stamp or stamps, etc. The writ was allowed and the petitioner discharged. In the instant case every count of the indictment is identical as to time, place and persons, the only difference in the counts being that they charge a different object of conspiracy.

2. The Statute of Limitations.

We desire to call to the court's attention that in each count of this indictment the conspiracy is charged to commit an offense against the United States and not to defraud the United States.

The period of limitation for prosecution in the instant case is fixed by Title 18, Sec. 3748, as amended on June 6, 1932. By the language of this enactment the general limitation for prosecutions under the Internal Revenue Laws is fixed at three years, subject to several exceptions. These exceptions are: (1) for offenses involving the defrauding or attempt to defraud the United States by conspiracy or not (2) for offenses of wilfully attempting any manner to evade or defeat a tax, (3) for acts relating to income tax returns, and finally (4) for conspiracy, where the object thereof is wilfully to evade or defeat any tax or the payment thereof. As to offenses falling within the exceptions, the period of limitation is fixed at six years.

The last proviso or excepting clause was apparently added to conform to the decision of the United States Supreme Court in the case of *United States v. Scharton*, 285 U. S. 518, which held that such excepting provisions were to be narrowly construed.

The court in that case refused to read into the language of the statute an attempt to defeat or evade the payment

of a tax as an offense included within the language of defrauding or attempting to defraud the United States.

This, and prior decisions of the same court, interpreting like sections, clearly demonstrate that in determining the period of limitation to be applied to prosecutions for conspiracy to violate various sections of the Internal Revenue laws, reference must be had to the substantive offense. Unless the substantive offense contains as an ingredient, one of the exceptions provided for, the general period of limitation applies.

Thus did the court so declare itself in this language:

"As said in the *Noveck* case, statutes will not be read as creating crimes or classes of crimes unless clearly so intended, and obviously we are here concerned with one meant only to fix periods of limitation. Moreover, the concluding clause of the section, though denominated a proviso, is an excepting clause and therefore to be narrowly construed. *McElvain v. U. S.*, 272 U. S. 633. And as the section has to do with statutory crimes it is to be liberally interpreted in favor of repose, and ought not to be extended by construction to embrace so-called frauds not so denominated by the Statutes Creating Offenses. *U. S. v. Hirsch*, 100 U. S. 33; *U. S. v. Rabinowich*, 238 U. S. 78; *U. S. v. Noveck*, 271 U. S. 201. The purpose of the proviso is to apply the six year period to cases in which defrauding or an attempt to defraud the U. S. is an ingredient under the statute defining the offense." *U. S. v. Noveck (supra)*.

With equal vehemence may we urge, in reading the added section applicable to prosecutions for conspiracy to defeat or evade the tax that it applies to cases in which this "is an ingredient under the statute defining the offense."

In the light of the law referred to, it therefore becomes patent that the period of limitation is three years.

Upon the trial, a claim of the running of the statute of limitations was made as to the Appellant. This was done

upon motion made at the conclusion of the Government's case and again in the form of requests to charge 8, 9 and 10 (R. 40). All such motions were denied by the trial court. Inasmuch as a general verdict of guilt was rendered and a general sentence imposed, it is obvious that such error upon the part of the court was prejudicial to their rights. The record clearly discloses that the Appellant herein made his last shipment of alcohol on or about July 24, 1936 (R. 88, 89, 224) and refused to have anything more to do with the conspiracy here charged.

In the case of *United States v. McElvain*, 272 U. S. 633, this Court held the proviso to U. S. Revised Statutes 1044 fixing the limitation period for prosecution of offenses against the United States does not extend to offenses not covered by the section and therefore does not apply to conspiracies to defraud the United States in respect to its Internal Revenue prosecuted under Section 37 of the Criminal Code.

3. Plea of former jeopardy should have been sustained.

On the trial of this case this Appellant filed a plea of former jeopardy (R. 475) and in that plea set out that he was indicted at the November Term, 1936, in the United States District Court at Chicago, Illinois, charged among other things with the conspiracy to violate the same laws at Chicago and elsewhere that this indictment charged him with, and that he entered a plea of guilty to that indictment and was sentenced to serve a term of two years and six months in the United States Penitentiary, which he served. We respectfully call the Court's attention to the indictment in the instant case and in every count of the present indictment it is charged that he conspired, among other places, at Chicago, Illinois, during the same time that he was charged by the indictment returned by the indictment returned by the Grand Jury at Chicago. The Court overruled that motion. We believe that he should have had the

benefit of it and that the laws laid down in the Fourth Circuit Court of Appeals in *Short, et al. v. United States*, 91 F. (2d) 614, should apply. In that case the Court said:

"Blanket charges of 'continuing' conspiracy with named defendants and with 'other persons to the grand jurors unknown' fulfill a useful purpose in the prosecution of crime, but they must not be used in such a way as to contravene constitutional guaranties. If general form charging a continuing conspiracy for a period of time, it must do so with the understanding that upon conviction or acquittal further prosecution of that conspiracy during the period charged is barred, and that this result cannot be avoided by charging the conspiracy to have been formed in another district where overt acts in furtherance of it were committed, or by charging different overt acts as having been committed in furtherance of it, or by charging additional objects or the violation of additional statutes as within its purview, if in fact the second indictment involves substantially the same conspiracy as the first."

CONCLUSION.

For all the reasons stated above, it is urged that the judgment of conviction herein should be reversed.

Respectfully submitted,

JOHN E. DOUGHERTY,
Counsel for Appellant, Allen Wainer.

APPENDIX.

1. Sec. 88, Title 18, U. S. C. A.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000.00, or imprisoned not more than two years, or both.

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(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner,

(2) for the offense of wilfully attempting in any manner to evade or defeat any tax or the payment thereof, and

(3) for the offense of wilfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document).

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Code, March 4, 1909, 35 Stat. 1096 (U. S. C., Title 18, Sec. 88), where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years. The time during which the person committing any of the offenses above mentioned is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings. Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district.

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Nos. 1027 and 1028

In the Supreme Court of the United States

OCTOBER TERM, 1941

HARRY BRAVERMAN, PETITIONER

v.

UNITED STATES OF AMERICA

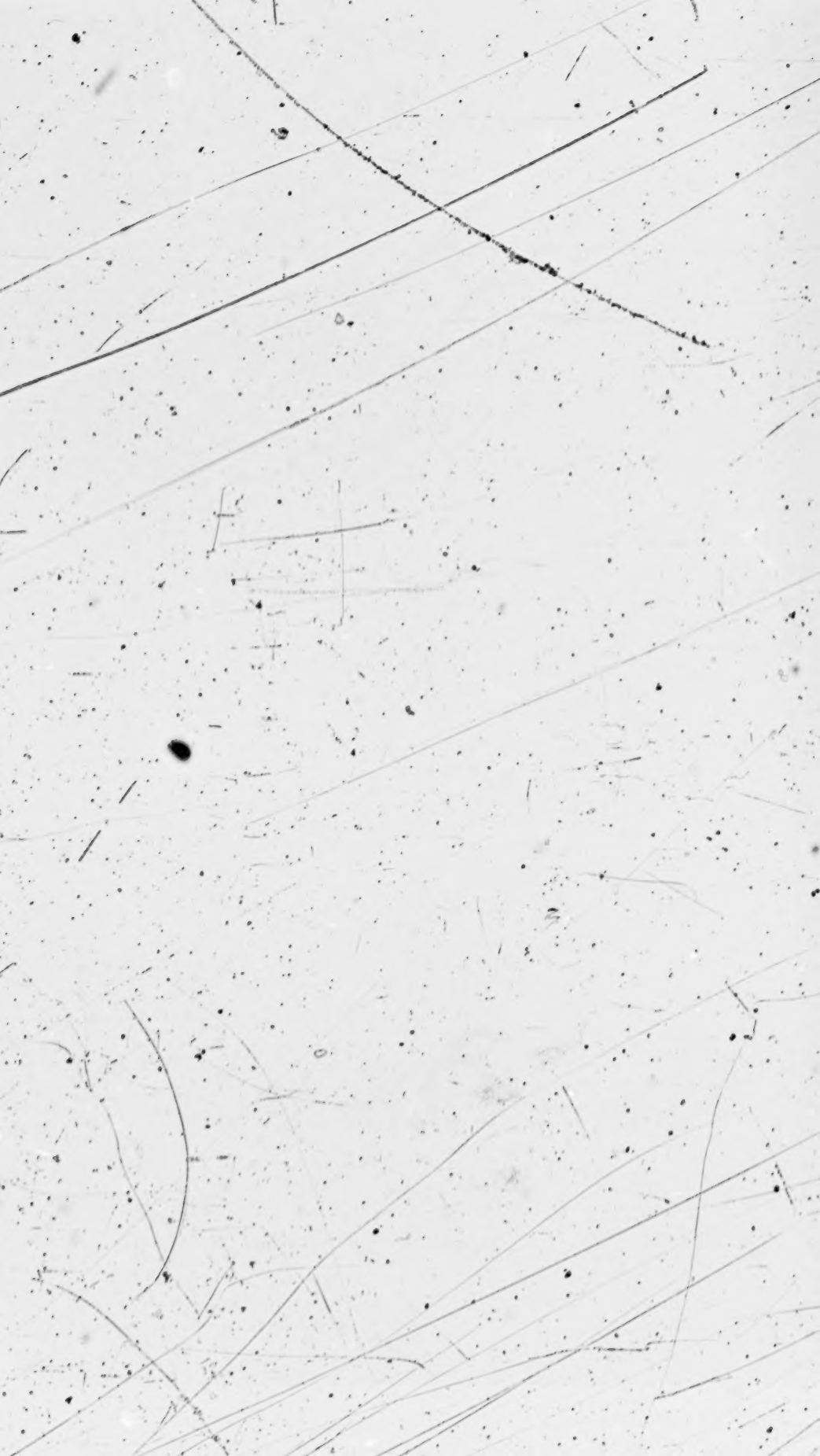
ALLEN WAINER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH
CIRCUIT

MEMORANDUM FOR THE UNITED STATES



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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1027

HARRY BRAVERMAN, PETITIONER

v.

UNITED STATES OF AMERICA

No. 1028

ALLEN WAINER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH
CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals
(R. 690-697) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals
was entered January 14, 1942 (R. 689), and peti-

tioners' separate petitions for rehearing (Wainer, R. 699-702; Braverman, R. 705-722) were denied on February 10 and March 2, 1942, respectively (R. 703, 723). The petitions for writs of certiorari were filed March 9, 1942. The jurisdiction of the Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (Braverman Pet. 2; Wainer Pet. 8). See also Rule XI of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the trial court erred in imposing general sentences of eight years' imprisonment upon petitioners' convictions under a seven-count indictment charging conspiracies to violate various provisions of the Internal Revenue Laws, where the case was submitted to the jury in accordance with the Government's claim that the seven counts charged the illegal objects of one continuing conspiracy and that the proof showed that each petitioner entered into such a conspiracy.

2. Petitioner Wainer also raises the question whether the six-year period of limitation prescribed by Section 3748 (a) of the Internal Revenue Code for violations of Section 37 of the Criminal Code (the conspiracy statute) "where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment

thereof," is inapplicable to the conspiracy charged in the indictment.¹

STATUTES INVOLVED

Section 37 of the Criminal Code (18 U. S. C. 88) reads:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more

¹ Petitioner Wainer raises a question of former jeopardy based upon the assertion that a former indictment in the Northern District of Illinois, to which he pleaded guilty, charged him with conspiring, among other places, at Chicago, Illinois, to violate the same laws, at Chicago and elsewhere, during the same time, as does the indictment in the instant case (Wainer Pet. 16). The Illinois indictment was marked as an exhibit (R. 475) in support of the plea of former jeopardy (R. 475-481), but is not printed in the record and apparently was not certified to the Circuit Court of Appeals as one of the original exhibits (R. 662, 664-666). The plea's rejection was not assigned as error (R. 49-51, 652-659), and the Circuit Court of Appeals did not pass upon the question (R. 689-697). Since the Illinois indictment is not in the record, comparison of it with the present indictment is, of course, impossible, and it cannot therefore be determined whether the plea was properly or improperly rejected. *Ex Parte Hull*, 312 U. S. 546, 551. It should be noted, also, that Wainer does not assert that the Chicago indictment charged that he entered into a conspiracy with the defendants named in the present case or that the conspiracy there charged was in fact the same as the one charged here (Wainer Pet. 16). Cf. *Short v. United States*, 91 F. (2d) 614, 624 (C. C. A. 4).

than \$10,000, or imprisoned not more than two years, or both.

Section 3748 (a) of the Internal Revenue Code (26 U. S. C. 3748 (a)) provides in part:

For offenses arising under section 37 of the Criminal Code, March 4, 1909, 35 Stat. 1096 (U. S. C., Title 18, § 88), where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years. * * *

STATEMENT

On December 19, 1939, a conspiracy indictment in seven counts was returned against petitioners and 30 others in the District Court for the Eastern District of Michigan (R. 1-26). The allegations of each count are alike as to parties, time and places of entry into, and duration of, the conspiracies. Each count charges that the conspiracy therein alleged was to commit a particular offense against the internal revenue laws, viz: Count 1 (R. 1-7), unlawfully to carry on the business of wholesale and retail liquor dealers without having the special occupational tax stamp as required by law; Count 2 (R. 7-12), unlawfully to possess distilled spirits, the immediate containers thereof not having affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payments of all internal revenue taxes imposed on such spirits; Count 3

(R. 12-15), unlawfully to transport large quantities of distilled spirits, the immediate containers thereof not having affixed thereto the required stamps; Count 4 (R. 15-18), unlawfully to carry on the business of distillers without having given bond as required by law and with intent to defraud the Government of the tax on the spirits which would be distilled; Count 5 (R. 18-21), unlawfully to remove, deposit and conceal distilled spirits in respect whereof a tax was imposed by law, with intent to defraud the United States of such tax; Count 6 (R. 21-24), unlawfully to possess, keep in custody, control, and set up unregistered stills and distilling apparatus; and Count 7 (R. 24-26), unlawfully to make and ferment mash fit for the production of distilled spirits on premises not duly authorized and designated according to law as a distillery.

Petitioners and four others were tried upon the indictment.² At the close of the Government's case a motion was made on behalf of petitioners to require the Government to elect upon which count it intended to proceed, upon the ground that the proof showed only one conspiracy (R. 462-

² Only three of the other defendants under this indictment were tried with petitioners; the others had either pleaded guilty or had not been apprehended (R. 620). Harry Klein, a defendant under another indictment which named petitioners as co-conspirators but not defendants, was also tried with petitioners (R. 620).

463, 467).³ Petitioners also moved for directed verdicts on the ground that the prosecution was barred by the running of the three-year statute of limitations, the indictment having been returned December 19, 1939, and the proof having showed that petitioners' connections with the conspiracy had terminated more than three years previous to that time (R. 464-467). These motions were denied (R. 481-482).

The Government took the position that the seven counts of the indictment charged the illegal objects of one continuing conspiracy and that the proof showed only one such conspiracy,⁴ but claimed that under the decision of the Circuit Court of Appeals for the Sixth Circuit in *Fleisher v. United States*, 91 F. (2d) 404, separate conspiracy charges would lie because each of the illegal objects constituted a separate and distinct offense (R. 460-467). The court refused to charge the jury on the theory of

³ At the beginning of the trial a motion to require the Government to elect upon which of the counts it would proceed was made and rejected (R. 59, 60).

⁴ The Assistant United States Attorney in charge of the prosecution stated that the manufacturing, transportation, failure to pay tax, etc. "are the separate illegal objects, alleged as to the objects of this conspiracy" (R. 468; see also R. 472), and that "The conspiracy is one as to time and place, and as to all the parties named in the indictment" (R. 470), but argued that the different objects of the conspiracy made it divisible into separate charges (R. 469, 474). He had also previously denied that the indictment set up seven separate conspiracies, stating, "It is one count—* * * One conspiracy indictment and seven counts charging seven illegal objects of the conspiracy" (R. 275).

seven separate conspiracies, as requested by the petitioner Braverman (R. 35-38, 40), and the case was submitted to the jury on the basis of the Government's claim that there was one continuing conspiracy (R. 626-629, 635, 639, 640-642). The jury returned a general verdict finding petitioners "guilty as charged" (R. 43), and each was sentenced generally to eight years imprisonment and the payment of a fine of \$2,000 (R. 44-45).⁵ The Circuit of Appeals for the Sixth Circuit affirmed these judgments (R. 689). As we read the opinion of that court (R. 690-697), it held, in effect, that, as a matter of law, a continuing conspiracy having as its objects the commission of seven different offenses may be punished as seven separate and distinct conspiracies because of the diversity of its objects (see particularly R. 690-692, 694, 695, 696-697).⁶

⁵ The jury disagreed upon a verdict as to two of the defendants and found the other two, Morris Frank and Harry Klein, guilty (R. 43). The defendant Frank, who received the same sentence as petitioners (R. 46) and elected to enter upon service of his sentence pending appeal (R. 49), joined in the appeal (R. 647-651, 690, 697), but has not petitioned for certiorari. The defendant Klein abandoned his appeal (R. 695).

⁶ It would seem unnecessary to recite the evidence since the case turns wholly upon the correctness of the rule of law apparently applied by the District Court in imposing the eight-year sentences and relied upon by the Circuit Court of Appeals in sustaining these sentences. A brief summary of the evidence appears in the opinion of the Circuit Court of Appeals at R. 695-696.

ARGUMENT

1. We think petitioners are right in their contention that an eight-year sentence may not be imposed for a single continuing conspiracy even though the conspiracy may have as its objects the commission of seven different offenses (Braverman Pet. 2, 11-20; Wainer Pet. 5-6, 9, 10-14). We are impelled to this conclusion because we are of the view that the court below applied a test as to distinctiveness of offenses which, as is made manifest by decisions of this and other courts, may not be applied in conspiracy cases.

In reaching the conclusion that separate punishment could be imposed on each count (R. 694), the court below expressly applied (R. 691) the principle enunciated in *Blockburger v. United States*, 284 U. S. 299, 304, that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not.¹ But this Court was obviously dealing only with substantive offenses, differing *toto cado* in nature from conspiracy charges.

In a conspiracy case the gist of the crime is the conspiracy, the confederation or combination of minds. *Wong Tai v. United States*, 273 U. S. 77, 81; *Williamson v. United States*, 207 U. S. 425,

¹ See also *Albrecht v. United States*, 273 U. S. 1, 11.

447; *Hyde v. Shine*, 199 U. S. 62, 76; *Bannon and Mulkey v. United States*, 156 U. S. 464, 468; *Dealy v. United States*, 152 U. S. 539, 547; *Pettibone v. United States*, 148 U. S. 197, 202; *United States v. Britton*, 108 U. S. 199, 204-205; *United States v. Hirsch*, 100 U. S. 33, 34. When the plot evolved contemplates bringing to pass a continuous result requiring continuous cooperation of the conspirators, the conspiracy is said to be continuing, but it is nevertheless single. *Kissell v. United States*, 218 U. S. 601, 607; *Brown v. Elliott*, 225 U. S. 392, 400. "The conspiracy is the crime and that is one, however diverse its objects" (*Frohwerk v. United States*, 249 U. S. 204, 210). Again, in *Ford v. United States*, 273 U. S. 593, 602, in speaking of an indictment which charged in one count a continuous conspiracy to violate two laws relating to the importation of intoxicating liquor into the United States, this Court said: "The charge is unitary in relating to one continuous conspiracy, although in proof of it different circumstances constituting it and overt acts in pursuance of it are disclosed." It follows, we submit, that one conspiracy in fact is but one conspiracy in law, regardless of the number of objective offenses it may contemplate.

These principles have been applied by the Circuit Courts of Appeals for the Second, Fourth, Fifth, and Seventh Circuits in holding that a single conspiracy does not become divisible because of the diversity of its aims and objects. *United*

States v. Manton, 107 F. (2d) 834, 838 (C. C. A. 2) (opinion by Circuit Justice Sutherland), certiorari denied, 309 U. S. 664; *Short v. United States*, 91 F. (2d) 614, 622 (C. C. A. 4); *Powe v. United States*, 11 F. (2d) 598, 599-600 (C. C. A. 5); *Bertsch v. Snook*, 36 F. (2d) 155, 156 (C. C. A. 5); *United States v. Anderson*, 101 F. (2d) 325, 333 (C. C. A. 7), certiorari denied, 307 U. S. 625; *Miller v. United States*, 4 F. (2d) 228, 230-231 (C. C. A. 7), certiorari denied, 268 U. S. 692; *Murphy v. United States*, 285 Fed. 801, 817 (C. C. A. 7), certiorari denied, 261 U. S. 617; see also *Tramp v. United States*, 86 F. (2d) 82, 83 (C. C. A. 8); *Troutman v. United States*, 100 F. (2d) 628, 632 (C. C. A. 10); *Ex parte Rose*, 33 F. Supp. 941, 942-943 (W. D. Mo.); *Sprague v. Aderholt*, 45 F. (2d) 790, 791-792 (N. D. Ga.); memorandum opinion in *Rogers v. Johnston* (N. D. Cal.), annexed to the Government's memorandum in *Schultz v. Hudspeth* (No. 802, present Term), now pending in this Court on motion for leave to proceed in *forma pauperis* and on petition for writ of certiorari.

It cannot be denied, however, that the decision of the court below finds support not only in earlier decisions of that Court, cited in its opinion (R. 690-692),* but in decisions of the Circuit Courts

* *Parmenter v. United States*, 2 F. (2d) 945, 946; *Fleisher v. United States*, 91 F. (2d) 404, certiorari denied on this point, 302 U. S. 673, but, in reality, distinguishable from the instant case for reasons hereinafter stated; *Meyers v. United States*, 94 F. (2d) 433.

of Appeals for the Eighth, Ninth and Tenth Circuits, which proceed, at least to some extent, on the same process of reasoning. *Beddow v. United States*, 70 F. (2d) 674, 676 (C. C. A. 8); *Thomas v. United States*, 156 Fed. 897, 912-913 (C. C. A. 8); *Yenkicho Ito v. United States*, 64 F. (2d) 73, 77 (C. C. A. 9); *Vlassis v. United States*, 3 F. (2d) 905, 906 (C. C. A. 9); ⁹ *Schultz v. Hudspeth*, 123 F. (2d) 729, 731-732 (C. C. A. 10).¹¹ See also *Piquett v. United States* 81 F. (2d) 75, 78-80 (C. C. A. 7).¹²

This Court's disposition of the petition for a writ of certiorari to review the decision of the court below in *Fleisher vs. United States*, 91 F. (2d) 404, lends no real strength to that court's decision in the instant case. In the *Fleisher* case the court below upheld consecutive sentences upon four counts of an indictment where each count

⁹ In this case, however, as is apparent from the court's opinion, the court's discussion of the question was *obiter dictum*, since concurrent sentences had been imposed under the two conspiracy counts of the indictment.

¹⁰ The discussion in this case is, however, very meager.

¹¹ In this case, as indicated (*supra*, p. 10), a petition for writ of certiorari in *forma pauperis* has been filed by Schultz (No. 802), and the Government is filing a memorandum in reply in which it states that it cannot support the judgment of the Circuit Court of Appeals on the ground upon which that Court predicated its decision.

In *Telman v. United States*, 67 F. (2d) 716 (C. C. A. 10), cited by the court below (R. 691), the question was not raised or passed upon.

¹² In this case, however, it is evident from the court's opinion (p. 79) that the conspiracies were distinct in point of fact.

charged a conspiracy identical as to duration, conspirators and place of entry into the conspiracy, but to violate a distinct provision of the internal revenue laws. This Court denied certiorari as to the contention that the consecutive sentences constituted double punishment, in violation of the Fifth Amendment, but granted certiorari on another point (302 U. S. 673). However, as is apparent from the opinion of the court below in the *Fletcher* case (p. 406), that court did not have the aid of the evidence in determining whether only one conspiracy was involved since the evidence was not brought up on the appeal (p. 406). Additionally, it was impossible to determine from the face of the indictment whether there was but one conspiracy, and it was not at all beyond the realm of possibility that there could have been four separate conspiracies.¹² In the instant case, however, the several counts of the indictment were conceded by the Government to charge the illegal objects of one continuing conspiracy, it was likewise conceded that the proof disclosed but one such conspiracy, the case was submitted to the jury on that theory, the jury necessarily found that the petitioners were each guilty of participa-

¹² Thus, in its brief in opposition (Nos. 202, 203, and 204, 1937 Term, p. 9), the Government pointed out that "It is not uncommon for large illicit liquor operators to have independent organizations for supplying the raw materials, manufacturing the liquor, and selling and distributing the finished product."

tion in the single conspiracy, and the consecutive sentences were approved by the Circuit Court of Appeals solely on the theory that such punishment would lie because of the distinctiveness of the offenses which were the objects of the conspiracy.

In view of the conflict of decisions the Government cannot, of course, oppose the granting of the petitions for writs of certiorari on the point under discussion, and it may be that the Court will desire to hear argument since the decision of the court below finds support not only in the prior decisions of that court but in several decisions by other Circuit Courts of Appeals. However, we think that these decisions are so manifestly out of line with the basic principles of the law of conspiracy, as enunciated in the decisions of this and other courts, that we have no objection to the reversal, without further argument, of the judgment of the Circuit Court of Appeals and the remanding of the case to the District Court for resentencing.¹⁴ A proper sentence would, of course, be a fine of not more than \$10,000, or imprisonment for not more than two years, or both, as authorized by the conspiracy statute (*supra*, pp. 3-4).

2. Petitioner Wainer contends (Pet. 14-16) that the general three-year period of limitation pre-

¹⁴ A new trial would not be required since, under the theory upon which the Government proceeded and under the trial court's charge, the jury necessarily found the petitioners guilty of participating in a single continuing conspiracy.

scribed by Section 3748 (a) of the Internal Revenue Code (26 U. S. C. 3748 (a)) is applicable and that since the proof showed that his last shipment of alcohol was made on or about July 24, 1936, more than three years prior to the return of the indictment (R. 1), the prosecution as to him was barred. However, Section 3748 (a) prescribes a six-year period of limitation for violations of the conspiracy statute "where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof" (*supra*, p. 4). The offenses charged in the various counts of the indictment as the objects of the conspiracy (*supra*, pp. 4-5) are clearly offenses under provisions which proscribe acts to evade or defeat the payment of a tax. The six-year period of limitation is therefore applicable.¹⁹

CONCLUSION

If certiorari is granted and argument is desired it should, we respectfully submit, be limited to the question whether the consecutive sentences were

¹⁹ This Court's decision in *United States v. Scharton*, 285 U. S. 518, cited by petitioner for the proposition that the excepting clauses contained in Section 3748 (a) are to be narrowly construed, furnishes no precedent for interpretation of the conspiracy clause contained therein. That case involved the interpretation of one of the provisos in the first paragraph of the section. The conspiracy clause, on the other hand, is set forth in a separate paragraph in affirmative language, rather than as a proviso, and, as Wainer admits (Pet. 14), "was apparently added to conform to the decision in the *Scharton* case."

improper. As stated, however, the Government has no objection to reversal, without argument, of the judgment of the Circuit Court of Appeals and the remanding of the case to the District Court for appropriate resentencing.

✓ CHARLES FAHY,

Solicitor General.

✓ WENDELL BERGE,

Assistant Attorney General.

ROBERT S. ERDAHL,

MELVA M. GRANAY,

✓ W. MARVIN SMITH,

Attorneys.

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Nos. 43 and 44

In the Supreme Court of the United States

OCTOBER TERM, 1942

HARRY BRAVERMAN, PETITIONER

v.

THE UNITED STATES OF AMERICA

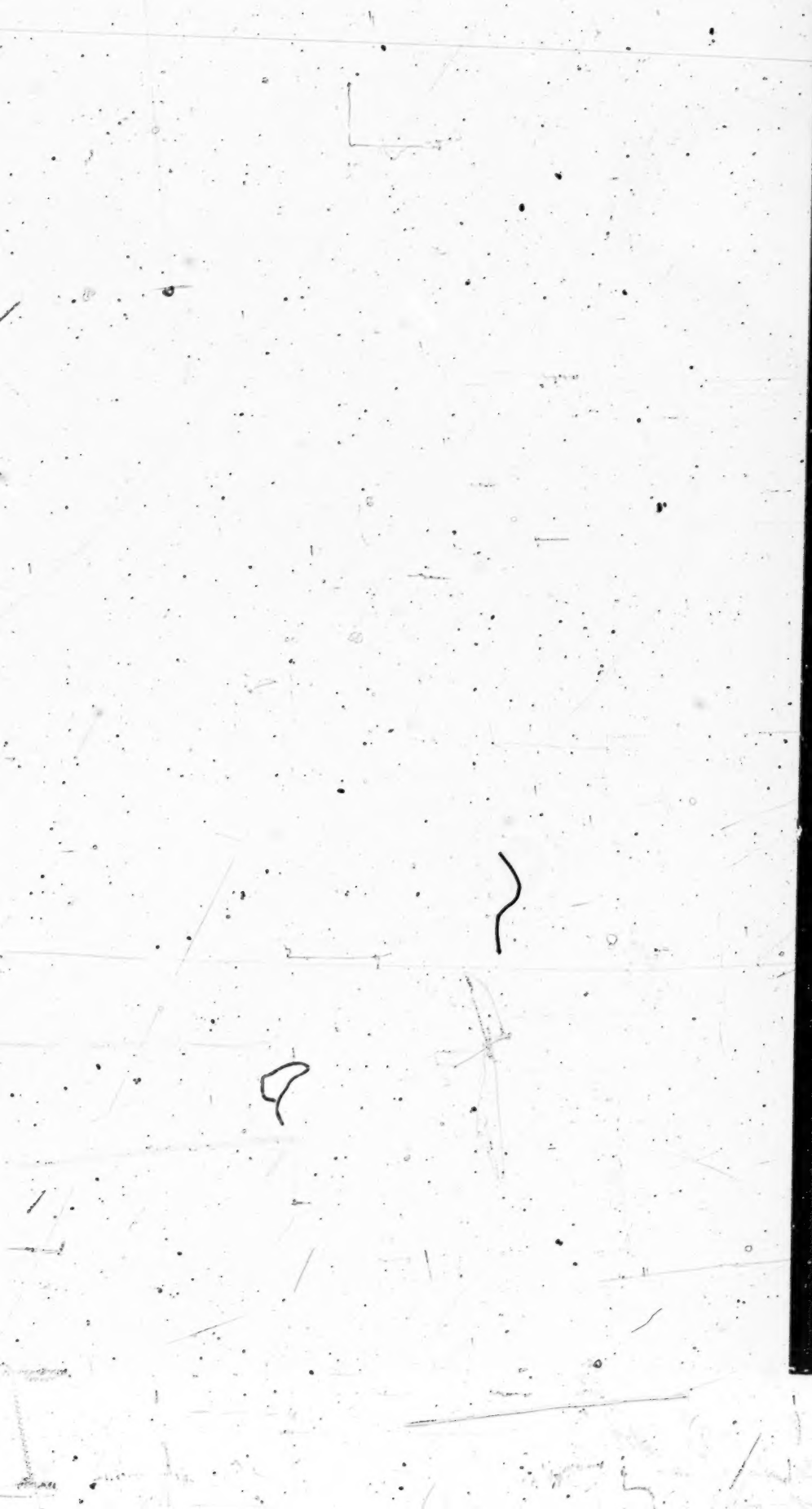
ALLEN WAINER, PETITIONER

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THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES



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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 43

HARRY BRAVERMAN, PETITIONER

v.

THE UNITED STATES OF AMERICA

No. 44

ALLEN WAINER, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the circuit court of appeals (R. 607-614) is reported at 125 F. (2d) 283.

JURISDICTION

The judgment of the circuit court of appeals was entered January 14, 1942 (R. 607); and petitioners' separate petitions for rehearing (R. 614) were denied on February 10 and March 2, 1942, respectively (R. 614-615). The petitions for writs of cer-

tionari were filed March 9, 1942, and were granted April 14, 1942 (R. 615). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the trial court erred in imposing general sentences of eight years' imprisonment upon petitioners' convictions under an indictment which, in each of its seven counts, charged a conspiracy to violate a separate provision of the internal revenue laws, where the Government claimed that the seven counts alleged merely the illegal objects of a single continuing conspiracy and the case was submitted to the jury on that theory.

2. Petitioner Wainer also raises the question whether the six-year period of limitation prescribed by Section 3748 (a) of the Internal Revenue Code for the prosecution of offenses arising under Section 37 of the Criminal Code (the conspiracy statute), "where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof," is inapplicable to the conspiracy charged in the indictment.

3. An additional question presented by petitioner Wainer is whether his plea of former jeopardy should have been sustained.¹

¹ The facts relating particularly to this contention are stated under Point III of the Argument, *infra*, pp. 56-57.

STATUTES INVOLVED

Section 37 of the Criminal Code (18 U. S. C. 88), reads:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

Section 3748 (a) of the Internal Revenue Code, so far as pertinent, is set forth at pp. 54-55, *infra*.

STATEMENT

On December 19, 1939, a conspiracy indictment in seven counts was returned against petitioners and 28 other defendants in the District Court of the United States for the Eastern District of Michigan. The indictment names seven other persons as co-conspirators but not as defendants, and also alleges that there were conspirators not known to the grand jurors. (R. 1-23.) The allegations of each count are alike as to parties, time and places of entry into and duration of the conspiracy therein charged. Each count charges

² The conspiracy was alleged in each count to have continued from November 1, 1935, to September 1, 1939, and to have been entered into in the Eastern District of Michigan and also in the states of Illinois, Wisconsin, and Ohio.

³ The overt acts recited in each count are not, however, identical.

that the conspiracy therein alleged was to commit a particular offense against the internal revenue laws, viz: Count 1 (R. 1-6), to carry on the business of wholesale and retail liquor dealers without having the special occupational tax stamp as required by law (26 U. S. C. (1934 ed.) 1937 (a) (1); Section 3253, Internal Revenue Code); Count 2 (R. 6-10), to possess distilled spirits the immediate containers of which would not have affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits (26 U. S. C. 1152 a. and g.; Section 2803 (a) and (g), Internal Revenue Code); Count 3 (R. 10-13), to transport large quantities of distilled spirits the immediate containers of which would not have affixed thereto the required stamps (26 U. S. C. 1152 a. and g.; Section 2803 (a) and (g), Internal Revenue Code); Count 4 (R. 13-15), to carry on the business of distillers without having given bond as required by law and with intent to defraud the Government of the tax on the spirits which would be distilled (26 U. S. C. 1184; Section 2833, Internal Revenue Code); Count 5 (R. 15-18), to remove, deposit and conceal distilled spirits in respect whereof a tax was imposed by law, with intent to defraud the United States of such tax (28 U. S. C. 1441 (a); Section 3321 (a), Internal Revenue Code); Count 6 (R. 18-20), to possess, keep in custody, control, and set up unregistered stills and dis-

tilling apparatus (26 U. S. C. 1162; Section 2810, Internal Revenue Code); and Count 7 (R. 21-23), to make and ferment mash fit for the distillation and production of distilled spirits on premises not duly authorized and designated according to law as a distillery (26 U. S. C. 1185; Section 2834, Internal Revenue Code).

Petitioners and four others were tried upon the indictment (R. 47).⁴ Among the motions presented on behalf of petitioners was a motion for a directed verdict made at the close of the Government's case based upon the ground that the prosecution was barred by the three year statute of limitations, the indictment having been returned December 19, 1939, and the proof having shown that petitioners' connections with the conspiracy had terminated more than three years previous to that time (R. 422-423, 425). This motion was denied and an exception allowed (R. 439).⁵

At the close of the Government's case petitioners renewed a motion which they had made at the beginning of the trial (R. 47) to require the Government to elect upon which of the seven counts of the

⁴ The other defendants had either pleaded guilty or had not been apprehended. Harry Klein, a defendant under another indictment making the same charges which, however, named petitioners and their co-defendants as co-conspirators but not as defendants, was tried at the same time (R. 567, 569-570).

⁵ Petitioner Wainer alone raises the limitations question in this Court.

indictment it would proceed (R. 420-421, 425). Their view was that the indictment charged, and consequently the proof must show, that there were seven separate conspiracies with seven separate objectives, but that, since it was the theory of the Government that there was but one unlawful agreement, and the proof did not show that there were seven separate conspiracies, the Government should be required to choose upon which one of the conspiracies charged the case should be submitted to the jury (R. 421). In response, the Government's attorney took the position that the seven counts of the indictment charged the illegal objects of one continuing conspiracy and that the proof showed only one such conspiracy, but he claimed that under the decision of the Circuit Court of Appeals for the Sixth Circuit in *Fleisher v. United States*, 91 F. (2d) 404, separate conspiracy charges would lie because each of the illegal objects constituted a separate and distinct offense (R. 426-432).^{*} The motion was denied and an exception taken (R. 439).

^{*} The following portions of the Government's argument are illustrative of its position (R. 426):

The COURT. * * *

Now, do I understand that each separate conspiracy has reference, first, to manufacture, to transportation, to failure to pay tax, and others?

Mr. HOPPING [Assistant United States Attorney]. Yes, your Honor, those are the separate illegal objects, alleged as to [sic] the objects of this conspiracy.

Previously, after the Government witness Edward Kleppel, one of the defendants, had testified on cross-examination that he had pleaded guilty to

The Court. I want to hear you on the law as to what right you have to separate all of these, when, as a matter of fact, in my judgment, you call it one conspiracy.

The Assistant United States Attorney then proceeded to discuss the *Fleisher* case and stated (R. 426-428):

Mr. HOPPING. If we charge them merely with setting up the still, with conspiring to do that, that would have been a complete conspiracy, and the object of the conspiracy as a part of the charge of conspiracy, that is what the Court of Appeals held among other things in that case. A conspiracy isn't complete, or a charge of conspiracy, unless it is alleged what illegal object or what offense against the laws of the United States is to be committed. The agreement to set up a still without registering it, is a complete and separate offense of conspiracy.

The Court. I agree with you on all of that. You haven't reached my point yet.

Mr. HOPPING. Then the same set of facts by which they set up the still without registering it, may also show that they entered into the business of distillers without giving bond, and that may be properly charged in the second count in the same indictment.

The Court. Charging what?

Mr. HOPPING. Charging conspiracy.

The Court. You might charge the substantive offense.

Mr. HOPPING. No; charge conspiracy in a second count, to carry on the business of distillers without giving bond, that was the second count in the *Fleisher* case. The same set of facts, the Court said, might partly be used to show that they agreed to and did manufacture mash to be used in the same distillery, and it is proper and permissible for the Government to charge a third count of conspiracy, the object to be to commit the other

the indictment and that he "just plead guilty to one conspiracy that I know of," the following

offense, to manufacture mash, and the fourth is to possess the alcohol, which is produced in that still. That is a fourth separate offense committed against the laws of the United States.

The Court. There is no question of those offenses, as being all there.

Mr. HOPPING. Now, in the Fletcher [Fleisher] case, our Circuit Court said this: * * * Each of the offenses was separate and distinct, but it doesn't state that the conspiracies were separate and distinct, one having an object to commit this offense against the United States—this offense is in the second count—and another offense in the third count, which is permissible and is approved by the Court of Appeals of the Sixth Circuit in the United States versus Fleischer case.

The Court. They say there was no record there. Wasn't there a printed record that they went up, solely on the sufficiency of the indictment?

Mr. HOPPING. On its face, yes. If the Government charged the seven counts as we have here, and failed to show any evidence that they agreed to enter into the wholesale and retail business, but merely showed that they manufactured and possessed the alcohol, we would undoubtedly fail within the language of this decision, which says that unless the Government shows proof of the object to commit another offense, it wouldn't be a separate offense. They were speaking merely of the indictment.

The Court then asked (R. 428): "What are you going to do in this case? This is quite a continuing affair. You are going to call upon this jury to sit down with a paper and pencil and keep track of all these names and say, 'Here, on that first conspiracy back there, these men down here weren't even members of it. Therefore, you can't convict them of that first conspiracy.'" Based upon a review of the evidence, the prosecuting attorney pointed out that the con-

question was propounded and the following colloquy ensued (R. 247-248):

Q. The indictment charges seven conspiracies.

The COURT. Well, let's settle that. That is an extravagant statement. You claim there are seven conspiracies?

Mr. FREDERICK [counsel for petitioner Braverman]. Set up in seven separate counts. Each count sets up a conspiracy, yes, your Honor, seven counts. Each count sets up a conspiracy.

The COURT. Is that right?

Mr. HOPPING [Assistant United States Attorney]. I would not say that that was, your Honor. It is one count—

The COURT. Well, never mind.

Mr. HOPPING. One conspiracy indictment and seven counts charging seven illegal objects of the conspiracy.

spiracy was a single continuing conspiracy pursuant to which certain of the original conspirators, aided by others who from time to time joined the conspiracy, engaged in certain offenses against the Internal Revenue laws, the carrying on of a wholesale and retail liquor business, the transportation of liquor, the operation of a still, etc. (R. 428-432). During the course of his discussion the prosecutor stated: "The conspiracy is one as to time and place, as to all of the parties named in the indictment. That is our theory." (R. 428.) "Now, they continue on with that kind of operation, even getting the raw materials back from Cleveland by Roadway Transit, sending them into the warehouse, and reloading these boxes, which is certainly a wholesale business. It is part of the same conspiracy, but that is a separate offense and is a different character of offense from the still" (R. 431).

The trial court refused to charge the jury on the theory that there were seven separate conspiracies (R. 33, 589) and the case was submitted to the jury on the basis of the Government's claim that there was one continuing conspiracy to commit seven offenses (R. 573-575, 580-581, 585-587).*

The 12th request to charge, which was refused, was as follows (R. 33):

I charge you ladies and gentlemen of the jury, that in considering the seven counts of this indictment, you must consider them as separate offenses and before a verdict of guilt may be rendered upon all, you must be satisfied from the testimony in the case and beyond reasonable doubt that there has been proof showing the existence of the separate agreements or conspiracies charged. If you find that there was but one agreement having as its purpose the accomplishment of an unlawful end and which encompassed the purposes set forth in the various counts of this indictment, it then becomes your duty to find the defendant, Harry Brayman, not guilty of the charges here made against him.

* Thus, the Court said in its charge: "The Government, briefly, claims this: That these men entered into a conspiracy, what would be known, in law, as a continuing conspiracy. * * * The Government claims in this case that this was a continuing conspiracy. It started back at the time alleged in the indictment and continued down for several years. That these men, or some of them, got together and proposed to engage in the illicit handling of alcohol, the manufacturing of alcohol." (R. 573.) "It further claims that that scheme, that plan, was carried on for a long period of time; for several years. It claims that these defendants had a part to do in it. * * *. And the Government claims, and that is; briefly, that these Defendants are all liable because it claims the evidence shows that they entered into a conspiracy to commit a crime against the United States; to violate the law, handling illicit alcohol without

The jury returned a general verdict finding petitioners "guilty as charged" (R. 35),⁹ and each was sentenced generally to eight years' imprisonment and the payment of a fine of \$2,000 (R. 35-37).¹⁰ On appeal by petitioners (R. 39-43)¹¹ and another defendant¹² the Circuit Court of Appeals affirmed the judgments of conviction (R. 607, 614).

tax, operating a still, in violation of the regulations, transporting alcohol, and numerous offenses, as charged in this indictment" (R. 575). "Having in mind that charge, with reference to a conspiracy, you must then proceed under the rules of law, which I have given you, to determine: first, was there a conspiracy entered into by these Defendants upon trial, as I have defined a conspiracy" (R. 580-581). There were repeated admonitions that the jury must find that there was "a" conspiracy and that the defendants were members of "this" conspiracy or "the" conspiracy (see R. 583, 585-587). As further reflecting the understanding of the trial court that there was factually but one conspiracy, that court, in ruling upon an objection by defense counsel, said, (R. 300): "The difficulty is you have got a long drawn out affair here—a big conspiracy, if there is one, with many involved. And the acts of various alleged members, if there is a conspiracy, bind upon all of them."

⁹ The jury disagreed upon a verdict as to two of the defendants on trial and found the other two, Morris Frank and Harry Klein, guilty (R. 35).

¹⁰ The record does not contain the proceedings in conjunction with the passing of the sentences.

¹¹ Their grounds of appeal and assignments of error disclose that they attacked the legality of their sentences (R. 43, 600) as well as the overruling of their contention that the statute of limitations barred their prosecution. (R. 41, 595).

¹² This defendant, Frank, who received the same sentence as petitioners (R. 37) joined in the appeal (R. 43-46, 590-594, 613) but elected to enter upon service of his sentence.

As we read the opinion of that court, while it does not advert specifically to the theory upon which the case was tried and submitted to the jury it does not deny that the evidence established factually but a single continuing conspiracy, but holds that where, as in the instant case, such a conspiracy contemplates the commission of seven distinct offenses against the internal revenue laws, it is proper to allege seven separate conspiracies and punish each separately (R. 608-609, 611, 612, 613). It reaches this conclusion by applying, as earlier it had done in the *Fleisher* case, *supra* (91 F. (2d) 404), the principle enunciated by this Court in *Blockburger v. United States*, 284 U. S. 299, 304, "that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not,"¹³ and by reasoning that since each of the substantive offenses which were the objects of the conspiracy required proof of "an added element of criminality not contained

pending appeal (R. 591). He did not petition for a writ of certiorari to review the affirmance of his conviction. The defendant Klein abandoned his appeal (R. 612).

¹³ *Garver v. United States*, 220 U. S. 338, 342; *Albrecht v. United States*, 273 U. S. 1, 11-12. A shorter statement of the test of identity of offenses, given in *Carter v. McClaghry*, 183 U. S. 365, 394, is whether "the same evidence is required to sustain them". See also *Morgan v. Devine*, 237 U. S. 632, 641.

in any other law", this permitted the charging of a separate conspiracy to cover each substantive offense and punishment upon that basis (R. 608-609, 611).¹⁴

¹⁴ In so holding the court below said (R. 611): "Upon the principles of law which have been adduced, we find that the record reveals sufficient substantial evidence to justify the verdict of the jury convicting the three appellants upon all seven counts of the indictment, *each of which embraces an added element of criminality not contained in any other law.* [See in this connection the court's italicization of the allegations of the indictment as to the various objective offenses (R. 607).] The conspiracies laid in each count are therefore separate and distinct crimes, separately punishable. * * * The fact that the conspiracy was also a general one to violate all laws repressive of its consummation does not gainsay the separate identity of each of the seven conspiracies. From the evidence may be readily deduced a common design of appellants and others, followed by concerted action, to ship disguised contraband liquor from Chicago to eastern Michigan to make mash, to set up stills, to operate illicit distilleries, to conceal the stillrun product in warehouses apart from the distilleries, to possess and also to transport the liquor in unstamped containers, and to operate both a wholesale and a retail liquor business without giving bond as required by law or having the required excise tax stamps." (Italics supplied.) The court also speaks in other places of "the widespread, comprehensive conspiracy" and of "the conspiracy" (R. 612-613). Its review of the evidence also presents the picture of a single continuing conspiracy (see R. 612-613).

Since the Government proceeded in the trial court and the case was submitted to the jury upon the theory that there was but a single continuing conspiracy and, hence, the validity of petitioners' sentences depends upon the correctness of the rule of law indubitably applied by the district court and expressly relied upon by the circuit court of appeals, we deem it unnecessary to make any recital of the

The circuit court of appeals further ruled that there was no merit in the petitioners' contention that their prosecutions were barred by the statute of limitations.¹⁹ It said that the limitation period is by the plain language of the statute [second paragraph of Section 3748 (a) of the Internal Revenue Code, *infra*, pp. 54-55] six years and not three years (R. 613-614).

SUMMARY OF ARGUMENT

I. Petitioners' eight year sentences are insupportable. The Government conceded in the trial court that the several counts of the indictment charged the illegal objects of a single continuing conspiracy, the case was submitted to the jury on that premise, the jury necessarily found that petitioners were each guilty of participating in the single conspiracy; and petitioners' sentences were approved by the circuit court of appeals, despite the existence of a single conspiracy, solely on the theory that such punishment would lie because of the distinctiveness of the offenses which were the objects of the conspiracy. At common law and under Section 37 of the Criminal Code, as is made manifest by numerous decisions of this Court, the heart of the offense is the

evidence. As indicated, the evidence is summarized in brief form in the opinion of the circuit court of appeals at R. 612-613; see also R. 429-432.

¹⁹ As heretofore stated, this contention is presented in this Court only by petitioner Wainer.

agreement among the conspirators to commit an offense against the Government, the collective planning of criminal conduct, the confederating or combining for criminal purposes, the conspiracy. A single unlawful agreement constitutes but one offense under Section 37, however diverse its criminal objects. The maximum imprisonment sentence which may be imposed upon petitioners is, therefore, two years.

This view is supported by those decisions in the lower federal courts which, unlike the decision below and kindred decisions, recognize the fundamental concept that the real offense under the statute is the confederating together. This Court's denial of a petition for a writ of certiorari to review the decision of the court below in *Fleisher v. United States*, 91 F. (2d) 404, lends no real strength to that court's decision in the instant case in view of the circumstances of the *Fleisher* case.

II. Petitioner Wainer's contention that his prosecution was barred because he withdrew from the conspiracy more than three years (but not more than six years) prior to the returning of the indictment is without merit. It is clear that the conspiracy charged falls within the second paragraph of Section 3748 (a) of the Internal Revenue Code, and, therefore, that the six year limitation applies.

III. Petitioner Wainer is not now in a position to urge that the trial court should have sustained his plea of former jeopardy. If consideration may be given to that contention, that court was not made

cognizant of any facts which would have justified it in concluding that there was merit in the plea.

ARGUMENT

I

PETITIONERS' EIGHT YEAR SENTENCES MAY NOT STAND

We agree with petitioners in their contention that their eight year sentences are insupportable. We think that under the conspiracy statute they may not be sentenced to imprisonment for more than two years.¹⁷

A. THEORY OF THE DECISION BELOW AND SUPPORTING DECISIONS

It cannot be doubted that the Government proceeded in the trial court and that the case was submitted to the jury on the premise that there was but a single continuing conspiracy to commit seven offenses against the internal revenue laws, and that the circuit court of appeals entertained no different idea. It is also apparent, we believe, that not only

¹⁷ While, to support his contention, petitioner Braverman relies on the Fifth Amendment (Br. 7), presumably, the provision "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb", sometimes thought of as the "double punishment provision" (cf. *Albrecht v. United States*, 273 U. S. 1, 11; *Murphy v. United States*, 285 Fed. 801, 817 (C. C. A. 7)), we do not believe that consideration need be given to the Fifth Amendment since, in our opinion, a correct interpretation of the conspiracy statute justifies the contention.

the circuit court of appeals,¹⁷ in sustaining petitioners' sentences, but the trial court in imposing them, acted upon the theory that, although there was in fact but one conspiracy,¹⁸ it was permissible, under the test of identity of offenses stated by this Court in *Blockburger v. United States* (*supra*, p. 12); to charge and to punish as if there were seven conspiracies because each of the seven objective offenses required proof of some element of criminality not involved in the others.¹⁹

¹⁸ A conspiracy to bring about a continuing result rather than to do but one misdeed is nevertheless single. *United States v. Kissel*, 218 U. S. 601, 607; *Hyde v. United States*, 225 U. S. 347, 369; *Brown v. Elliott*, 225 U. S. 392, 400; *Ford v. United States*, 273 U. S. 593, 602. See also *United States v. Borden Co.*, 308 U. S. 188, 202; *Interstate Circuit v. United States*, 306 U. S. 208, 227; *In re Snow*, 120 U. S. 274, 281, 286; *United States v. Manton*, 107 F. (2d) 834, 839 (C. C. A. 2), certiorari denied, 309 U. S. 664. In the *Kissel* case, p. 607, it was said: "* * * when the plot contemplates bringing to pass a continuous result that will not continue without the continuous cooperation of the conspirators to keep it up, and there is such continuous cooperation, it is a perversion of natural thought and of natural language to call such continuous cooperation a cinematographic series of distinct conspiracies, rather than to call it a single one."

¹⁹ Thus in its opinion in the *Fleisher* case, upon which it heavily relies, the court below said (91 F. (2d), at 406): "The same proof would not necessarily establish these separate charges. A conspiracy to set up an unregistered still could be proved without presentation of evidence of the conspiracy to manufacture mash, and vice versa. This is true as to a conspiracy to operate a still without giving bond, and unlawfully to possess unstamped containers of liquor. Certain entirely distinct elements are required to establish the conspiracy described in each count, and hence four distinct offenses are charged."

Admittedly the decision of the circuit court of appeals finds support not only in its decision in the *Fleisher* case²⁰ and other decisions of that court²¹ but in decisions of the circuit courts of appeals for several other circuits which utilize, in part at least, the same process of reasoning in disposing of the question of punishment in conspiracy cases or the analogous question of double jeopardy in such cases. *Beddow v. United States*, 70 F. (2d) 674, 676 (C. C. A. 8);²² *Thomas v. United States*, 156

²⁰ While certiorari was denied by this Court on the question of the validity of the sentence in that case, 302 U. S. 673, the case is, in reality, distinguishable from the instant case for reasons hereinafter stated (*infra*, pp. 49-52).

In the *Fleisher* case the court cited in support of its conclusion, among others, the cases of *United States v. Wexler*, 79 F. (2d) 526 (C. C. A. 2); *Leonard v. United States*, 18 F. (2d) 208, 213 (C. C. A. 6); *King v. United States*, 31 F. (2d) 17, (C. C. A. 9); *Slade v. United States*, 85 F. (2d) 786 (C. C. A. 10), and *Chrysler v. Zerbst*, 81 F. (2d) 975 (C. C. A. 10). These cases did not involve at all, however, the question of identity of offenses as between conspiracy counts or indictments.

²¹ *Meyers v. United States*, 94 F. (2d) 433; *Parmenter v. United States*, 2 F. (2d) 945, 946 (while this decision gives some slight support to the court's view, the opinion indicates (p. 948) that under the proof there may have been in fact two separate conspiracies). *Leonard v. United States*, 18 F. (2d) 208, 213, a prior decision by the court below which it cites in its opinion in the instant case (R. 608), is not a conspiracy case, but its citation well illustrates the emphasis which that court places on the distinctiveness of the substantive offenses in passing upon the propriety of the punishment for conspiracy.

²² *Powe v. United States*, 11 F. (2d) 598 (C. C. A. 5), cited in this case; is in essence a decision to the contrary, in

Fed. 897, 912-913 (C. C. A. 8); ²³ *Yenkichi Ito v. United States*, 64 F. (2d) 73, 77 (C. C. A. 9); ²⁴ *Olmstead v. United States*, 19 F. (2d) 842, 847 (C. C. A. 9); ²⁵ *Vlassis v. United States*, 3 F. (2d) 905,

our opinion (see pp. 42-43, *infra*). In *Pollock v. United States*, 35 F. (2d) 174 (C. C. A. 4), also cited by the court, the recitation of the evidence (p. 175) would indicate that there were in fact two separate conspiracies and there is nothing in the remainder of the opinion to negative that conclusion. In *Henry v. United States*, 15 F. (2d) 365 (C. C. A. 1), also relied upon by the court, the question whether the case should have been submitted to the jury upon a plea of *autrefois acquit* was decided solely upon the basis of two indictments naming but one common conspirator (Henry) and averring different overt acts; no other evidence was before the court. There was no reliance upon any difference in objective offenses. It was impossible upon the face of the indictments to determine whether they charged the same conspiracy.

²³ In this case, which involved the question of former jeopardy, the evidence may have shown but one conspiracy in fact, but the opinion is not clear. The opinion is also muddled by a recognition, in connection with other rulings, that the real offense under Section 37 of the Criminal Code is the conspiring or combining for illegal purposes. See pp. 902, 906-907.

²⁴ In this case, however, as is apparent from the court's opinion, the court's discussion of the question of double punishment was *obiter dictum*, since concurrent sentences had been imposed under the two counts of the conspiracy indictment.

²⁵ While this case ultimately reached this Court on writ of certiorari limited to the question of the admissibility of evidence obtained by wire tapping (277 U. S. 438, 455), *Olmstead* did not, either in his petition for writ of certiorari or in his petition for a rehearing of the order originally de-

906 (C. C. A. 9); ²⁶ *Schultz v. Hudspeth*, 123 F. (2d) 729, 731-732 (C. C. A. 10); ²⁷ see also *Piquett v. United States*, 81 F. (2d) 75, 79-80 (C. C. A. 7); ²⁸ *Bertsch v. Snook*, 36 F. (2d) 155, 156 (C. C. A. 5); ²⁹ *Francis v. United States*, 152 Fed. 155, 156, 157 (C. C. A. 3).³⁰ In several of these

nying certiorari (No. 493, October Term, 1927), raise the question whether the consecutive sentences imposed upon him under the two conspiracy counts were valid. The circuit court of appeals did not discuss the question of punishment from the standpoint of what the evidence showed as to the number of conspiracies, but merely upon the basis of what the indictment charged. In its opinion this Court refers to the petitioner as having been convicted of "a conspiracy". (277 U. S., at 455.)

²⁶ The discussion in this case is, however, very meager. Additionally, the evidence was not before the court.

²⁷ In this case the question of double punishment arose on *habeas corpus* and consequently the evidence was not before the court. The case is now pending in this Court on petition for a writ of certiorari in *forma pauperis* (No. 6), and the Government has filed a memorandum in reply in which it states that it cannot support the judgment of the circuit court of appeals on the ground upon which that court predicated its decision, but attempts to sustain that judgment upon other grounds.

In *Telman v. United States*, 67 F. (2d) 716 (C. C. A. 10), cited by the court below in the instant case (R. 608), so far as appears from the opinion the question of double punishment was not raised or passed upon.

²⁸ In this case, however, it would seem evident from the court's opinion (pp. 79-80) that the two conspiracies were distinct in point of fact. Cf. also the decisions by the same court recited at pp. 38-42, *infra*.

²⁹ In this case the correct result was undoubtedly reached, but by erroneous reasoning. See footnote 56, *infra*, pp. 43-44.

³⁰ The discussion in this case, however, is very abbreviated.

cases the evidence was not before the court, but the rationalization in the decisions would seemingly have justified a conclusion that more than one conspiracy could have been charged and cumulative maximum punishments inflicted even if the evidence had shown that there had been, in fact, but one conspiracy.³¹

R. THE DECISION BELOW AND SUPPORTING DECISIONS IGNORE THE WELL-ESTABLISHED PRINCIPLE THAT THE GIST OF THE OFFENSE IS THE CONFEDERATING TOGETHER

We submit that the decision below and kindred decisions in emphasizing the distinctiveness of the objective offenses and then, by that medium, spelling out multiple conspiracy charges, cumulatively punishable, ignore a fundamental concept in the law of criminal conspiracy, long established and repeatedly enunciated under varying circumstances by this and other courts—i. e., that the real offense is the combining, the confederating, for unlawful purposes, the conspiracy, and not the substantive offenses which are the objects of the conspiracy or the overt acts in furtherance of the conspiracy. In consequence these decisions inappropriately apply a test designed, primarily at least, for the resolution of the question of identity.

³¹ Parenthetically it may be observed that our research has disclosed that the reasoning employed in the above cases is sometimes at odds with that utilized in other cases decided by the same courts involving problems basically analogous.

of offenses where substantive crimes are concerned.³²

(1) *Conspiracy at the Common Law*.—Tracing the growth of the law of criminal conspiracy, Francis B. Sayre, in a comprehensive article in 35 Harvard Law Review 393, points to the final emergence of the offense in the Third Ordinance of Conspirators, 33 Edw. I, passed in 1304, which in certain respects summed up the pre-existing law and gave a precise definition of conspiracy but was confined to combinations to procure false indictments, to bring false appeals, or to maintain vexatious suits. In the *Poulterers' Case*, 9 Coke 55^b, decided in 1611, the doctrine was immeasurably broadened by the Court of Star Chamber when it ruled in an action for damages brought against false accusers that it was no defense that the victim of the false accusation had never been indicted or acquitted. The Court of Star Chamber definitely held that, as in conspiracies for maintenance, the confederating together constituted the gist of the offense, rather than the false indict-

³²In the *Blockburger* case (284 U. S. 299, 303-304), which states the test of identity of offenses relied upon by the court below, the question was whether a single sale of morphine, violating the provisions of Section 1 of the Narcotic Act, forbidding sale except in or from the original stamped package, and of Section 2, forbidding sale not in pursuance of a written order of the person to whom the drug is sold, constituted two offenses or merely one.

ment and subsequent acquittal. Then, to quote Sayre (pp. 398-399):

From the doctrine announced by this decision, it was an easy step to the very general doctrine that since the gist of the crime is the conspiracy, no other overt act is necessary; and this came to be the well-acknowledged law of criminal conspiracy. In the ancient phraseology, it was not necessary to show that anything had been "put in ure"; the mere conspiracy alone was held to constitute the gist of the offense and to be therefore indictable. * * * the principle, thus early decided, has come to be a universal and well-settled doctrine of the modern law of conspiracy. * * *

This, as Sayre says (p. 399), was not "out of accord with the well-recognized principle of criminal law that without some overt act no one can be convicted of a common-law crime, no matter how black his intent may have been. For the conspiring together itself constitutes an overt act which may well furnish the basis of criminal liability." ³³

³³ See *Hyde v. United States*, 225 U. S. 347, 359; *Bannon and Mulkey v. United States*, 156 U. S. 464, 468. Even now, under the Sherman Anti-Trust Act, there is no necessity for the purpose of criminal responsibility to prove any overt act other than that of conspiring. *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 225, 252; *United States v. Trenton Potteries*, 273 U. S. 392, 402. That is true of other federal conspiracy statutes. See e. g. Section 6 of

During the seventeenth century, according to Sayre (p. 400), the courts took a second important step in extending and broadening the limits of the crime of conspiracy. Prior to that century the crime had been confined very strictly to combinations to defeat the just administration of the law, such as the procuring of false indictments, embracery, and maintenance. In that century the courts began to extend the offense so as to cover combinations to commit all crimes of whatsoever nature, misdemeanors as well as felonies. There then developed gradually, in accordance with the spirit of the times, a tendency in the direction of undertaking to punish acts immoral as well as those violative of express law, and the idea gained currency on many sides that courts should similarly undertake to punish conspiracies to commit immoral as well as those to commit illegal acts. To reach the result that a conspiracy conviction should be allowed for a combination to commit an act not in itself criminal, dependence was placed upon the well-acknowledged formula that the conspiracy constitutes the gist of the crime (Sayre, pp. 401-403); impetus was given to the new doctrine by the famous but vague epigram of Lord

the Criminal Code (18 U. S. C. 6); Section 19 of the Criminal Code (18 U. S. C. 51).

Under the common law theory overt acts may be of importance as evidence of the conspiracy or as matters of aggravation. *Hogan v. O'Neill*, 255 U. S. 52, 55.

Denman in *Jones' Case*, 4 B. & Ad. 345, 349 (1832), that a conspiracy indictment must "charge a conspiracy either to do an unlawful act or a lawful act by unlawful means" (p. 405); and by the early nineteenth century the doctrine had had frequent reiteration and some application in cases both in England and in this country (pp. 406-409). Thus in *State v. Burnham*, 15 N. H. 396, a case decided in 1844, it was said (pp. 402, 403):

An act may be immoral without being indictable, where the isolated acts of an individual are not so injurious to society as to require the intervention of the law. But when immoral acts are committed by numbers, in furtherance of a common object, and with the advantages and strength which determination and union impart to them, they assume the grave importance of a conspiracy, and the peace and order of society require their repression.³⁴ * * *

* * * * *

When it is said in the books that the means must be unlawful, it is not to be understood that those means must amount to indictable offences, in order to make the offence of conspiracy complete. It will be enough if they are corrupt, dishonest, fraudulent, immoral, and in that sense illegal, and it is in the combination to make

³⁴ See *Callan v. Wilson*, 127 U. S. 540, 555-556; *Federal Trade Commission v. Raymond Company*, 263 U. S. 565, 574; *Redford Co. v. Stone-Cutters' Ass'n*, 274 U. S. 37, 54.

use of such practices that the dangers of this offence consist.³⁵

It is manifest, therefore, that under what may be termed the common law of criminal conspiracy the crime consisted of the combination or confederation, the conspiracy; that not even an overt act was required, the conspiracy itself being regarded as a sufficient overt act; and that, indeed, according to many authorities, the conspiracy need not contem-

³⁵ Applications of this doctrine are given in the following quotation from the work on *Criminal Law* of Justice Miller of the United States Court of Appeals for the District of Columbia (pp. 112-114):

As has been already indicated, many combinations have as their objects the commission of crimes against persons. However, the law of conspiracy goes beyond such combinations and includes also combinations corruptly, dishonestly or fraudulently to injure, or oppress or prejudice other individuals, although the act contemplated, if done by one person, would be not criminal or even tortious in character. It has frequently been held a crime to conspire to defraud a person out of his property where the fraud amounted neither to a cheat at common law, nor to false pretenses under the statute. It has also been held criminal to conspire to do many other acts not punishable as crimes, as, for instance, to seduce a female where seduction was not a crime; to procure a fraudulent and sham marriage; to effect the escape of a female infant for the purpose of marriage, against her father's will; to procure a fraudulent divorce; to induce a woman to prostitute herself; to slander a person, or otherwise injure him in his character or business; to charge a person with being the father of a bastard, in order to extort money; to have a sane person declared insane. * * *

plate even a criminal act or criminal means,³⁶ the mere combining or confederating of the conspirators being regarded as sufficiently anti-social to justify public condemnation.³⁷ Certainly under the common law theory that the crime was the conspiracy, there could be no basis for the view that a single conspiracy could be split into two or more conspiracies for the purpose of trial and punishment merely because there was a variety of criminal objects or means in contemplation.

(2) *Conspiracy under Section 37 of the Criminal Code.*—Section 37 of the Criminal Code, it is true, specifically requires proof: (1) that the conspiracy be one to commit an offense against the United States, and (2) that one or more of the conspirators have done some act to effect the object of the con-

³⁶ In *Duplex Co. v. Deering*, 254 U. S. 443, 465, a Sherman Act case, the Court said that "the accepted definition of a conspiracy is, a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means." *Pettibone v. United States*, 148 U. S. 197, 203." See also *Callan v. Wilson*, 127 U. S. 540, 555-556.

³⁷ Sayre's historical summary was made as a prelude to his criticism of the doctrine that a combination may be punished criminally even though neither the object thereof nor the means utilized are criminal, his view being that the doctrine is logically unsound and historically is founded on misconceptions and erroneous applications of ambiguous statements (p. 409 *et seq.*). It is evident, however, that the doctrine gained considerable prominence at the common law. See footnote 4 to the opinion in *Gebardi v. United States*, 287 U. S. 112, 120, quoted at p. 29, *infra*.

spiracy. But, we submit, the purpose of these requirements was not to disturb the concept at common law that the gist of the offense is the conspiracy.

The definition of a conspiracy at common law similarly embraced the idea that criminal responsibility ensued if the unlawful agreement had in contemplation the commission of a crime, yet it was never doubted that the offense really was the combining or confederating, the conspiring together. That this is the evil at which Section 37 of the Criminal Code aims likewise cannot be doubted. In *United States v. Rabinowich*, 238 U. S. 78, in answering the argument that it would be unreasonable or inconsistent with the general policy of the Bankruptcy Act to allow a longer period for the prosecution, under Section 37 of the Criminal Code, of a conspiracy to violate one of the penal clauses of the Bankruptcy Act than for the violation itself, this Court said (p. 88):

* * * For two or more to confederate and combine together to commit or cause to be committed a breach of the criminal laws, is an offense of the gravest character, sometimes quite outweighing, in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection,

requiring more time for its discovery, and adding to the importance of punishing it when discovered.³⁸

Also, as was pointed out by this Court in *Gebardi v. United States*, 287 U. S. 112, 120, footnote 4:

The requirement of the statute that the object of the conspiracy be an offense against the United States, necessarily statutory, *United States v. Hudson*, 7 Cranch 32, avoids the question much litigated at common law (see cases cited in Wright, *The Law of Criminal Conspiracies* [Carson ed. 1887] and in Sayre, *Criminal Conspiracy*, 35 Harv. L. Rev. 393) of the criminality of combining to do an act which any one may lawfully do alone.³⁹

Nor did the requirement of Section 37 that one or more of the conspirators must do some overt act alter the essential nature of the offense as being the conspiracy. Despite the controversy which arose in *Hyde v. United States*, 225 U. S. 347, and *Brown v. Elliott*, 225 U. S. 392, decided on the same day, which divided this Court five to four, as to whether the overt act is in any sense a part of the crime or whether the requirement thereof, as earlier held by

³⁸ See also *Callan v. Wilson*, 127 U. S. 540, 555-556.

³⁹ Sayre severely attacks the logic of the common law idea that criminality may result when two persons join together to commit that which one can lawfully do alone (p. 409-411). He is also critical of the common law idea on the ground that it robs the law of definiteness (p. 412 *et seq.*).

the Court,⁴¹ is merely to afford a *locus penitentie*,⁴² there can be no doubt that the heart of the offense is still the conspiracy. Even the majority in those cases, tacitly at least, recognized this when they held, in effect, that the overt act renewed and continued the conspiracy in time and place (*Hyde*, p. 363; *Brown v. Elliott*, pp. 400-401).⁴³ And in the later case of *Joplin Mercantile Co. v. United States*, 236 U. S. 531, 535-536, this Court said that an overt act, although essential to the completion of the crime, is still in a sense "something apart" from the conspiracy, being "an act to effect the object of

⁴¹ *United States v. Britton*, 108 U. S. 199, 204-205.

⁴² In the *Hyde* and *Brown v. Elliott* cases it was held by the majority that consistently with the Sixth Amendment a conspiracy could be prosecuted in any district in which an overt act was performed, and that the period of limitation must be computed from the date of the last overt act specified in the indictment.

⁴³ As is apparent from *People v. Mather*, 4 Wend. (N. Y.) 229, 261, relied upon by the majority in the *Hyde* case (pp. 364-365), the unlawful agreement is considered as renewed or continued as to all of the conspirators wherever and whenever any one of them does an act in furtherance of their common design. And in *United States v. Kissel*, 218 U. S. 601, 608, cited by the majority in both the *Hyde* case (pp. 367, 369) and in *Brown v. Elliott* (p. 400), it was said: "A conspiracy is a partnership in criminal purposes. That as such it may have continuation in time is shown by the rule that an overt act of one partner may be the act of all without any new agreement specifically directed to that act." See also *United States v. Borden Co.*, 308 U. S. 188, 202; *Interstate Circuit v. United States*, 306 U. S. 208, 227; *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 227, 253-254.

the conspiracy." Also, the provision for an overt act was more nearly in accord with the philosophy of criminal responsibility that one should not be punished for an evil design unless he has taken some step to carry it out, than was the common law idea that the confederation or agreement was alone sufficient. *Bannon and Mulkey v. United States*, 156 U. S. 464, 469.

C. NUMEROUS DECISIONS OF THIS COURT ARE BASED UPON THE PREMISE THAT THE REAL OFFENSE UNDER SECTION 37 IS THE AGREEMENT FOR CONCERTED CRIMINAL ACTION, THE CONSPIRACY

Irrespective of the criticism in the *Hyde* case of definitions appearing in earlier decisions by this Court which might have excluded the overt act as in any sense a part of the crime under Section 37 (p. 359); this Court has never departed from the view, which it has expressly articulated in numerous cases, that that at which Section 37 and similar federal conspiracy statutes "is aimed is not the offense which is the object of the conspiracy or the overt act to effect that object, but the agreement among the conspirators to commit an offense against the Government, the collective planning of criminal conduct, the confederating or combining for criminal purposes, the conspiracy."⁴⁵ Moreover,

⁴⁵ See, e. g., the Federal Kidnapping Act (18 U. S. C. 408c); the Espionage Act of June 15, 1917, c. 30, Title I, sec. 4, 40 Stat. 217, 219 (50 U. S. C. 34).

⁴⁶ *United States v. Falcone*, 311 U. S. 205, 210; *Gebardi v. United States*, 287 U. S. 112, 121; *Wong Tai v. United States*, 273 U. S. 77, 81; *Frohwerk v. United States*, 249 U. S.

the Court has decided too many cases on this premise, even where it has not expressed the thought in concrete terms, for it to be open to question. While none of these decisions involved the precise question here presented, we submit that they make the answer to it inevitable.

Thus in the leading case of *United States v. Rabinowich*, 238 U. S. 78, this Court, in reviewing the earlier decisions, said (pp. 85-86):

It is apparent from a reading of § 37, Crim. Code (§ 5440, Rev. Stat.), and has been repeatedly declared in decisions of this court, that a conspiracy to commit a crime is a different offense from the crime that is the object of the conspiracy. *Callan v. Wilson*, 127 U. S. 540, 555; *Clune v. United States*, 159 U. S. 590, 595; *Williamson v. United States*, 207 U. S. 425, 447; *United States v. Stevenson* (No. 2), 215 U. S. 200, 203. And see *Burton v. United States*, 202 U. S. 344, 377; *Morgan v. Devine*, 237 U. S. 632.⁴⁶ The conspiracy, however fully formed, may fail of its object, however earnestly pursued; the contemplated crime may never be consummated; yet the conspiracy

204, 210; *Williamson v. United States*, 207 U. S. 425, 447; *Hyde v. Shine*, 199 U. S. 62, 76; *Bannon and Mulkey v. United States*, 156 U. S. 464, 468; *Dealy v. United States*, 152 U. S. 539, 547; *Pettibone v. United States*, 148 U. S. 197; 202; *United States v. Britton*, 108 U. S. 199, 204; *United States v. Hirsch*, 100 U. S. 33, 34.

⁴⁶ See also *United States v. McElvain*, 272 U. S. 633, 639; *United States v. Hutto*, No. 1, 256 U. S. 524, 529; *Ford v. United States*, 273 U. S. 593, 619.

is none the less punishable. *Williamson v. United States, supra.*⁴⁷ And it is punishable as conspiracy, though the intended crime be accomplished. *Heike v. United States*, 227 U. S. 131, 144.

Nor do we forget that a mere conspiracy, without overt act done in pursuance of it, is not criminally punishable under § 37, Crim. Code. *United States v. Hirsch*, 400 U. S. 33, 34; *Hyde v. Shine*, 199 U. S. 62, 76; *Hyde v. United States*, 225 U. S. 347, 359. There must be an overt act; but this need not be of itself a criminal act; still less need it constitute the very crime that is the object of the conspiracy. *United States v. Holte*, 236 U. S. 140, 144; *Joplin Mercantile Co. v. United States*, 236 U. S. 531, 535, 536.⁴⁸ Nor need it appear that all the conspirators joined in the overt act. *Bannon v. United States*, 156 U. S. 464, 468. A person may be guilty of conspiring although incapable of committing the objective offense. *Williamson v. United States, supra*; *United States v. Holte, supra.*⁴⁹ And a single conspiracy might have for its object the violation of two or more of the criminal laws, the substantive offenses having perhaps different periods of

⁴⁷ See also *Goldman v. United States*, 245 U. S. 474, 477; *United States v. Manton*, 107 F. (2d) 834, 846 (C. C. A. 2), certiorari denied, 309 U. S. 664.

⁴⁸ See also *Pierce v. United States*, 252 U. S. 239, 244.

⁴⁹ See *Gebardi v. United States*, 287 U. S. 112, and the instances therein given in footnote 5 (pp. 120-121); *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 225, footnote 59.

limitation. (See *Joplin Mercantile Co. v. United States*, 236 U. S. 531, 547, 548, for an instance of a conspiracy with manifold objects.)

Upon the same postulate, that it is the unlawful agreement to offend against the penal laws of the United States at which the statute is directed, this Court has decided, for example: that a single count in an indictment for conspiracy to commit two offenses is not bad for duplicity (*Frohwerk v. United States*, 249 U. S. 204, 209-210; *Ford v. United States*, 273 U. S. 593, 602);⁵⁰ that a conspiracy having as its object the commission of an offense denounced by the Bankruptcy Act is not in itself an offense arising under that Act and therefore not subject to the one-year statute of limitations prescribed thereby (*United States v. Rabino-wich*, 238 U. S. 78; see *United States v. Hirsch*, 100 U. S. 33, 34, 35, and *United States v. McElvain*, 272 U. S. 633, 638, holding that conspiracies having as their objects the violation of the internal revenue laws are not offenses "arising" under those laws and hence not within a statute of limitations applicable to those offenses);⁵¹ that the conspiracy

⁵⁰ *United States v. Manton*, 197 F. (2d) 834, 839 (C. C. A. 2), certiorari denied, 309 U. S. 664.

⁵¹ *United States v. Kapp*, 302 U. S. 214, 216, is not, we submit, to the contrary. In that case it was held that within the meaning of the Criminal Appeals Act an indictment for conspiracy, under Section 37 of the Criminal Code, to commit a substantive offense, may be treated as founded on the statute at the violation of which the conspiracy is aimed. Obviously, unless such a holding were made, the

must be sufficiently charged and cannot be aided by averments of acts done by one or more of the conspirators in furtherance of the objects of the conspiracy (*United States v. Britton*, 108 U. S. 199, 205; *Peltibone v. United States*, 148 U. S. 197, 203; *Pierce v. United States*, 252 U. S. 239, 244); that in an indictment for conspiracy the same degree of detail is not required in stating the object of the conspiracy as if the indictment were one charging the substantive offense (*Williamson v. United States*, 207 U. S. 425, 447-448; *Crawford v. United States*, 212 U. S. 183, 191-192; *Joplin Mercantile Co. v. United States*, 236 U. S. 531, 548-549; *Frohwerk v. United States*, 249 U. S. 204, 209; *Thornton v. United States*, 271 U. S. 414, 423; *Wong Tai v. United States*, 273 U. S. 77, 81; *Glasser v. United States*, 315 U. S. 60, 66); that it is within the power of Congress to provide a more severe punishment for persons convicted of conspiracy to do a particular act than that provided for persons committing such act (*Clune v. United States*, 159 U. S. 590, 595; *United States v. Stevenson* (No. 2), 215 U. S. 201, 203); that "if the conspiracy was entered into within the limits of the United States and the jurisdiction of the court, the crime was then complete,

Government would have no right of appeal in a conspiracy case under the Criminal Appeals Act when, in sustaining a demurrer, motion to quash or motion in arrest of judgment, the district court's decision is wholly predicated upon the validity or construction of the statute defining the substantive offense.

and the subsequent overt act in pursuance thereof may have been done anywhere" (*Dealy v. United States*, 152 U. S. 539, 547); that a person is not twice put in jeopardy by reason of the fact that after being convicted by a court martial of conspiracy to defraud the United States and also of the causing of false and fraudulent claims to be made against the United States, the sentence imposed upon him is greater than the court martial could inflict on conviction of either of the offenses charged, taken singly, since each is a distinct offense although growing out of the same transaction (*Carter v. McClaughry*, 183 U. S. 365, 390-395); that the contemplated offense need not be itself punishable through a criminal prosecution but only through suit for a penalty (*United States v. Hutto*, No. 1, 256 U. S. 524, 528-529); that one who, without more, furnishes supplies to an illicit distiller is not guilty of conspiracy even though the seller may have furthered the object of the conspiracy to which the distiller was a party but of which the supplier had no knowledge (*United States v. Falcone*, 311 U. S. 205, 210-211).⁵²

If, as is made manifest by the decisions of this Court, the real offense under Section 37 is the agreement for concerted criminal action, it must

⁵² In view of the numerous decisions by this Court it would seem unnecessary to discuss the multitude of decisions in the lower federal courts which, although not passing upon the precise question here presented in deciding the problems involved, are predicated upon the premise that the heart of the offense under Section 37 is the conspiracy.

be evident that a single such agreement constitutes but one offense, regardless of how many criminal objects it may have had in contemplation. As was said by this Court in *Frohwerk v. United States*, 249 U. S. 204, 210, "The conspiracy is the crime, and that is one, however diverse its objects."⁵³ Consequently, if there be established one of the criminal objects charged it can serve no purpose, from the standpoint of punishment, to determine, through application of the test of identity of offenses stated in *Blockburger v. United States*, *supra*, whether that object is the same or different in its elements from some other object which may have been within the conspirators' contemplation.⁵⁴ It must also be apparent that whether there is one or more conspiracies in law in a given case must depend upon whether there is one or more conspiracies in fact. The instant case was tried and punishment was imposed and sustained upon the basis that there was but one conspiracy in fact. One conspiracy being but one offense, Section 37 authorizes punishment which may not exceed, in

⁵³ See also *United States v. Manton*, 107 Fed. (2d) 834, 838 (C. C. A. 2), certiorari denied, 309 U. S. 664; *Harvey v. United States*, 23 F. (2d) 561, 564 (C. C. A. 2).

⁵⁴ Indeed, it is well established that only one of the criminal objects alleged need be proved. *Kepl v. United States*, 299 Fed. 590, 591 (C. C. A. 9); *McDonnell v. United States*, 19 F. (2d) 801, 803 (C. C. A. 1), certiorari denied, 275 U. S. 551; *United States v. Baker*, 61 F. (2d) 469, 470 (C. C. A. 2); *McWhorter v. United States*, 62 F. (2d) 829, 830 (C. C. A. 5).

maximum, imprisonment for two years and a fine of \$10,000. Petitioners' sentences of eight years therefore exceeded those permitted by the statute by six years.

D. THE CORRECTLY REASONED DECISIONS IN THE LOWER FEDERAL COURTS RECOGNIZE THAT THE HEART OF THE OFFENSE UNDER SECTION 37 IS THE UNLAWFUL AGREEMENT AND THAT SUCH AN AGREEMENT CONSTITUTES BUT A SINGLE OFFENSE HOWEVER DIVERSE MAY BE ITS CRIMINAL OBJECTS

The view that petitioners' sentences may not stand has the support of the authorities in the lower federal courts which, we submit, proceed on correct reasoning in passing upon the question of punishment for conspiracy or the analogous question of double jeopardy.

In *United States v. Anderson*, 101 F. (2d) 325 (C. C. A. 7), certiorari denied, 307 U. S. 625, two indictments were returned against the defendants, one charging a continuing conspiracy under Section 37 of the Criminal Code, to obstruct and retard the passage of the United States mails, in violation of Section 201 of the Criminal Code, and the other in two counts charging a conspiracy in violation of Section 1 of the Sherman Act, to obstruct the transportation in interstate and foreign commerce of passengers and freight, including coal, the charges arising out of labor difficulties in connection with certain mines in Illinois. On each indictment each defendant was sentenced to the maximum punishment permitted by the conspiracy statute upon which the indictment was founded; the

sentences to run consecutively. On appeal, the Circuit Court of Appeals for the Seventh Circuit held (p. 333) that the consecutive punishments could not stand because there was but one conspiracy having as its objects not only the stoppage of transportation of coal but also interference with the transportation of the mails. Relying upon the statement of this Court in the *Frohwerk* case, *supra*, that "The conspiracy is the crime, and that is one, however diverse its objects,"⁵⁵ the court said (p. 333) that "we can not believe that Congress intended to permit the accumulation of sentences upon diverse objects of a conspiracy where there was but one conspiracy * * *." The court also relied upon its prior decisions in *Miller v. United States*, 4 F. (2d) 228, certiorari denied, 268 U. S. 692; and *Murphy v. United States*, 285 Fed. 801.

⁵⁵ The court thought that this statement of the Court may have been dictum, albeit sound as applied to the facts of the case before it. The supplemental brief for *Frohwerk* in this Court (No. 685, October Term, 1918) makes, however, the contention (p. 13) "that the first count of the indictment is duplicitous". The first count of the indictment was the conspiracy count, and it alleged (R. 4) that the objects of the conspiracy were to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, and to obstruct the recruiting and enlistment services of the United States to the injury thereof, and of the United States, while the Government was at war with Germany, each of which objects constituted a separate offense under Section 3, Title I, of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 217, 219, 50 U. S. C. 33.

In the *Miller* case, 4 F. (2d) 228, that defendant, with others, was charged in one count with conspiring to transport unlawfully spirits removed from a bonded warehouse, and in a second count with conspiring to remove spirits from a bonded warehouse. He was sentenced to imprisonment for two years and to pay a \$10,000 fine on the first conspiracy count; on the second, he was sentenced to imprisonment for two years and to pay a fine of \$5,000, the terms of imprisonment to be served consecutively. After stating (4 F. (2d) at p. 231) that "there is nothing in the evidence which warrants the conclusion that there were here two separate conspiracies—one for Miller to transport industrial alcohol, and the other for Miller to aid and abet in the removal from the warehouse of the alcohol. We would be compelled to go far afield to gather from this record proof of more than a single conspiracy, even though in effecting its purpose a plurality of substantive and severally punishable offenses may have been committed," the Circuit Court of Appeals for the Seventh Circuit held that "Since the evidence warrants the conclusion that there was a conspiracy wherein Miller would aid in the general purpose of removing alcohol, * * * and does not show a separate conspiracy to transport the alcohol after its removal" (p. 231), the sentence on count 1 could not be sustained. It said that "a single conspiracy, if covering the entire transaction, may not be split up into a plurality of

offenses" (p. 230). The court accordingly modified the judgment by striking out the sentence on the first count (p. 232), that alleging a conspiracy to transport the alcohol.

In the *Murphy* case, 285 Fed. 801, there arose the question whether Murphy could be lawfully sentenced upon two counts of an indictment, one of which charged him and others with conspiring to rob the mails, and the other with a conspiracy to have in their possession and to conceal the mail bags and proceeds thereof, secured through robbery, as charged in the previous count. The maximum sentence under the conspiracy statute had been imposed upon each count. In reaching the conclusion that Murphy could not be so punished because of the Fifth Amendment, which "protects all against double punishment for the same offense," the court, on petition for rehearing, said (p. 817):

We are not so much interested in the difference, if any, between the commonly called substantive crimes (robbery and having and concealing goods secured through robbery) as we are in the so-called conspiracy offenses. That they are distinct and different offenses must, of course, be conceded. But, upon the facts in this case, is there justification for our reaching a different conclusion, because dealing with alleged conspiracies, instead of the substantive crimes which were the object of the conspiracies? The precise question is: Can a conviction,

based upon two conspiracy charges, one charging the defendants with a conspiracy to rob, the other charging them with a conspiracy to have and to conceal the property thus secured through robbery, be maintained? Indeed, the issue may be still further narrowed. *Upon the evidence in this case*, can the conviction on these two counts be sustained? * * * [Italics the court's.]

It may be admitted that separate conspiracies may be thus formed, to effectuate which different plans involving perhaps different conspirators are formulated. We need not decide any such imaginary case, but content ourselves with a decision applicable to the facts in this case. The evidence leaves no room for legitimate discussion. It conclusively establishes but one conspiracy. There was no separate conspiracy to have and to conceal the stolen property, and no evidence tending to show such separate combination.

The court accordingly modified Murphy's sentences by striking out the sentence imposed on the count charging conspiracy to conceal the goods secured through the robbery (pp. 817-818).

In *Pow v. United States*, 11 F. (2d) 598, an indictment was returned against Powe, Jemison and others, charging them with a continuing conspiracy in Mobile, Alabama, covering the period between January 1, 1922, and November, 1923, to sell intoxicating liquor to the general public. The indictment alleged that the conspiracy contem-

plated more than one offense of the character described. Powe was acquitted on this indictment. A later indictment against Powe and Jemison charged in one of its counts a continuing conspiracy in the Southern District of Alabama, extending from January 1, 1923, to January 17, 1925, to sell, barter, deal in, furnish, possess, and deliver intoxicating liquor. The question presented was whether the trial court erred in refusing to sustain a plea of *autrefois acquit* based on the earlier indictment. The Circuit Court of Appeals for the Fifth Circuit, in reciting the facts, pointed to the testimony of Jemison that there was one general continuing conspiracy between him and a number of other defendants, including Powe, to commit a number of offenses, but that there was no separate conspiracy to commit a single offense, and that the period covered by the conspiracy extended back as far as 1921, and continued until November, 1923. The Circuit Court of Appeals, reversing the District Court, held that Powe's plea of *autrefois acquit* should have been sustained, saying (p. 599) that "The government cannot split up one conspiracy and make several conspiracies out of it."⁶⁶

⁶⁶ In a later case in the same circuit, *Bertsch v. Snook*, 36 F. (2d) 155, the question whether the appellant had been subjected to double punishment arose solely upon the face of the indictment, in a habeas corpus proceeding. There was no other evidence before the court. The first count of the indictment charged the appellant with having conspired with others "to assault any persons having charge, control or custody of any mail matter * * * also to rob, steal

In *United States v. Mazzochi*, 75 F. (2d) 497, there were two conspiracy counts identical in every respect except as to the narcotic drugs sold and the buyers. Consecutive maximum sentences were imposed. The Circuit Court of Appeals for the Second Circuit, in a *per curiam* opinion, held that "it would be preposterous to argue that, if several per-

and purloin the mail matter, including letters, packages and pouches, containing such matter, * * * and to receive, secrete, conceal, unlawfully have in their possession and destroy such mail matter." The second count charged the same defendants with conspiracy "to rob, steal and purloin any mail bag, * * * to convey away such mail bags to the hindrance and detriment of the public service, to appropriate the same to their own use, and to tear, cut and otherwise injure the said mail bags with intent to rob and steal any mail contained therein." Upon plea of guilty the trial court imposed a sentence of two years on each count, the maximum, to run consecutively. The Circuit Court of Appeals held that there was but one offense and ordered the prisoner's discharge after he had served two years. The court appropriately pointed out that the prisoner had been subjected to the maximum imprisonment authorized for a single conspiracy by Section 37 of the Criminal Code and that it followed that if the two conspiracy counts to which he pleaded guilty charged the same offense, it was error to have refused to order his discharge from further imprisonment (p. 156). But the court reasoned that but one offense was charged because the second count, viewed in the light of the contemplated substantive offenses, included, element for element, everything that was charged in the first count. While the court thus proceeded by what we conceive to be an erroneous process of rationalization, it would seem that it might appropriately have held that in fact, and therefore in law, there was but one conspiracy since it appeared that each count grew out of the same mail robbery.

sons combine to sell drugs generally, that single venture breaks up into as many separate ventures as there chance to be sales. The sales are the conclusion and the fruit of the original plan, the very reason for its being; they may be multiform, but the plan is single" (p. 498). The court accordingly reduced the sentence to the maximum for a single count.

In *Short v. United States*, 91 F. (2d) 614 (C. C. A. 4), the question presented was whether pleas of former jeopardy should have been sustained as to two of the appellants, Nebbs and Fentress. They were charged with conspiring in the Eastern District of Virginia continuously from December, 1933, to July, 1936, to violate several sections of the internal revenue laws relating to liquor, including R. S. 3450. Some of the overt acts were alleged to have been committed in the Eastern District of North Carolina. The pleas of former jeopardy were based upon two conspiracy indictments in the Eastern District of North Carolina, one against Nebbs, to which he pleaded guilty, and one against Fentress, upon which he was acquitted. Each of these indictments covered a portion of the period referred to in the later indictment, but there were differences between the earlier and the later indictments in the places charged as the places of conspiring, the persons named as conspirators, and the overt acts. The earlier indictments also did not name R. S. 3450 as one of the statutes which the conspirators contemplated violating.

The Circuit Court of Appeals for the Fourth Circuit, in an opinion by Judge Parker, held that the pleas of former jeopardy should have been submitted to the jury, pointing out that as to Nebbs there was evidence introduced at the trial of the case at bar which gave ground for a reasonable inference that for the overlapping period covered by both indictments against him those indictments related to the same conspiracy, and that as to Fentress there were circumstances brought out at the trial of the later indictment which indicated that he could have been convicted under the earlier indictment, and also that the differences between the two indictments and the generality of the language employed made it impossible to say as a matter of law upon the face of the indictments whether they related to the same conspiracy. The court considered at length the various differences between the indictments which the Government stressed and its treatment of those differences well illustrates the Government's position herein, that the determining factor in each case is whether there is in fact but one conspiracy. It would unduly extend this brief to review fully the court's discussion but, concerning the fact that the indictment at bar, as contrasted with the North Carolina indictments, alleged that an object of the conspiracy was the violation of R. S. 3450, the court said (p. 622):

The crime charged in the North Carolina indictments, as well as in the indictment

before us, is conspiracy to manufacture, remove, and conceal distilled spirits in violation of the internal revenue laws, not the specific violation of those laws which are the objects of the conspiracy. Such a conspiracy is a single crime, even though it may contemplate the doing of acts which will violate a number of statutes; and it cannot be split up into a number of offenses by charging in different indictments the violation of different ones of these statutes as objects of the conspiracy. To permit this would be, not only to permit the same conspiracy to be prosecuted a number of times in violation of the rule against double jeopardy; but also to permit the punishment prescribed by Congress to be increased without authority of law. When a conspiracy has been once prosecuted, therefore, the rule against double jeopardy forbids that it be prosecuted again under an indictment which merely adds allegations as to its objects, as that the violation of an additional statute was contemplated by it.

It is to be noted that the rule in case of prosecution for conspiracy to violate statutes is different from the rule applicable in prosecutions for violation of the statutes themselves. In the latter case, in the absence of circumstances giving rise to the doctrine of merger, there may be a separate prosecution for each of the statutes violated without any splitting of offenses; for each of the statutory crimes involves a different element.

In the case of conspiracy, however, the gist of the crime is the unlawful agreement, or partnership in criminal purposes thereby created; and one conspiracy does not become several because it may incidentally involve the violation of several statutes. * * *

In support of its conclusion the court cited, among others, the *Murphy* and *Powe* decisions (pp. 622-624).

In *Ex parte Rose*, 33 F. Supp. 941 (W. D. Mo), the court was able, on habeas corpus, to determine from the face of the indictment that the two counts thereof, each alleging a conspiracy, charged but a single conspiracy, the only difference between them being that each alleged that the conspirators contemplated the violation of a different section of the internal revenue laws relative to liquor. On the basis of the *Miller*, *Powe*, *Anderson* and *Short* cases the court held that the petitioner could not be required to serve more than the maximum of two years permitted by the conspiracy statute. A similar ruling was made on habeas corpus in *Sprague v. Aderholt*, 45 F. (2d) 790 (N. D. Ga.). See also *People v. Silverman*, 281 N. Y. 457 (Ct. of App.).⁵⁷ Other cases illustrative of the correct ap-

⁵⁷ In *United States v. Brimsdon*, 23 F. Supp. 510 (W. D. Mo.), which arose on a plea in abatement, it was held that an indictment charging a conspiracy to injure voters in the fifteenth precinct of the twelfth ward in a certain city in the exercise of their right to vote at a certain congressional election did not charge the same offense as an indictment alleging a conspiracy to so injure voters in the fifth precinct

proach in determining whether there exists more than one conspiracy, *i. e.*, the determination of how many conspiracies there are in fact, are *Gebardi v. United States*, 57 F. (2d) 617, 619 (C. C. A. 7),²⁸ and *Watkins v. Zerbst*, 85 F. (2d) 999 (C. C. A. 10).

E. THE DENIAL OF CERTIORARI BY THIS COURT IN THE FLEISHER CASE DOES NOT GIVE SUPPORT TO THE DECISION BELOW

This Court's disposition of the petition for a writ of certiorari to review the decision of the court below in *Fleisher v. United States*, 91 F. (2d) 404, *supra*, lends no real strength to that court's decision in the instant case. In the *Fleisher* case

of the twelfth ward in the same city. The contention was that the evidence at the trial of the former indictment tended to prove that the defendant was a party to a conspiracy to injure voters in the twelfth ward generally. The court said that the difficulty with the argument was that the earlier indictment did not so charge: "It charged only a conspiracy to injure certain citizens, as fully described as if they (were) named, whereas the indictment in this case charges a conspiracy to injure and oppress certain other citizens, as fully described as if they were named" (p. 512). While it is difficult to follow the court's reasoning if the defendant's conception of the evidence at the trial of the first indictment was correct, it should be noted that the court did not in any wise disagree with the decisions in the *Short*, *Poise*, *Miller* and *Murphy* cases, but thought those decisions were distinguishable (pp. 512-513).

²⁸ While this decision was reversed by this Court (287 U. S. 112), the reversal occurred because it could not agree with the court below that the woman could under the circumstances of the case be convicted with the man of conspiracy to violate the White Slave Act.

the court below, employing the same reasoning as it does in the present case, upheld cumulative sentences upon four counts of an indictment where each count charged a conspiracy identical as to duration, conspirators named and place of entry into the conspiracy, but differed from the other counts in the allegation of the internal revenue law to be violated.⁵⁹ This Court denied certiorari as to the contention that the cumulative sentences constituted double punishment, in violation of the Fifth Amendment, but granted certiorari as to another point (302 U. S. 218, 219, 673; cf. petition for writs of certiorari (p. 4) and supporting brief (p. 3) in Nos. 202, 203 and 204, 1937 Term).

However, as is apparent from the opinion of the court below in the *Fleisher* case (p. 406), that court did not have the evidence before it.⁶⁰ It consequently could not be ascertained whether the evidence established but one conspiracy in fact and the court was compelled to assume that, in accordance with the indictment, testimony was offered showing the existence of four separate conspiracies. Additionally, it could not be definitely determined from the face of the indict-

⁵⁹ The objective offenses were to possess unregistered distilling apparatus; to make and ferment mash in an unauthorized distillery; to carry on the business of distillers without giving bond; and to possess distilled spirits in unstamped containers.

⁶⁰ The appeal was prosecuted under Rule VIII of the Criminal Appeals Rules and therefore without a bill of exceptions.

ment that there was but one conspiracy⁶¹ and it was not at all beyond the realm of possibility that there could have been four.⁶² It is therefore evident that Fleisher did not, and could not without the evidence, establish his contention that there was one conspiracy. Under the circumstances the Circuit Court of Appeals correctly disposed of the case in upholding the cumulative sentences although, we submit, it employed erroneous reasoning in depending upon the distinctiveness of the substantive offenses alleged in the various counts of the indictment.⁶³ There was consequently no necessity for a review of the question of punishment by this Court.⁶⁴ In the instant case, however, the several counts of the indictment were conceded by the Government to charge the illegal objects of one continuing conspiracy, the case was submitted to the jury on that theory, the jury necessarily found that petitioners were each guilty of participating in the

⁶¹ The court below pointed out in its opinion that the period covered by the indictment was over twelve months and different overt acts were charged in each count.

⁶² As the Government indicated in its brief in opposition (Nos. 202, 203, and 204, 1937 Term, p. 9) it is not uncommon for large illicit liquor operators to have independent organizations to perform various functions.

⁶³ The Government in its brief in opposition resorted to the same reasoning as the Circuit Court of Appeals (pp. 7-12), although it did, as stated, indicate the possibility that there could, in fact, have been four separate conspiracies (see preceding footnote).

⁶⁴ "The denial of a writ of certiorari imports no expression of opinion upon the merits of the case * * *." *United States v. Carver*, 260 U. S. 482, 490.

single conspiracy, and petitioners' eight year sentences were approved by the Circuit Court of Appeals, despite the existence of a single conspiracy, solely on the theory that such punishment would lie because of the distinctiveness of the offenses which were the objects of the conspiracy.

While, as a precautionary measure, it may possibly be of some aid to the prosecution to charge each of the illegal objects of a conspiracy in a separate count rather than in a single count,⁶⁵ the prosecutor cannot, of course, by so doing convert what is essentially a single conspiracy into multiple conspiracies for the purpose of punishment. As was said in *Murphy v. United States*, 285 Fed. 801, 817 (C. C. A. 7), "It is the evidence, and not the theory of the pleader, to which we must look to determine [the] issue" of double punishment. See also *Short v. United States*, 91 F. (2d) 614, 624 (C. C. A. 4). In each case the determination must be how many conspiracies there are in fact. The instant case does not involve the factual difficulty present in many cases (cf. *Schultz v. Hudspeth*, No. 6, present Term, now pending in this Court on motion for leave to proceed *in forma pauperis* and on petition for a writ of certiorari) of determining the number of conspiracies; the trial record requires the assumption that there was but one. Conse-

⁶⁵*United States v. Anderson*, 101 F. (2d) 325, 333 (C. C. A. 7), certiorari denied, 307 U. S. 625; *Sprague v. Alderholt*, 45 F. (2d) 790, 791 (N. D. Ga.); see also *Dealy v. United States*, 152 U. S. 539, 542-543.

quently, petitioners for this single crime may be given no greater punishment than the maximum fixed by the statute, a fine of not more than \$10,000, or imprisonment for not more than two years, or both (*supra*, p. 3). The Circuit Court of Appeals therefore erred in sustaining petitioners' sentences of imprisonment for eight years and a fine of \$2,000. This Court has the power to correct the error by vacating the invalid portion of the sentences (the additional six years) or by remanding the cases to the district court for resentencing in accordance with the statute.⁶⁶

II

THE SIX-YEAR LIMITATION PRESCRIBED BY THE SECOND PARAGRAPH OF SECTION 3748 (a) OF THE INTERNAL REVENUE CODE APPLIES TO THE CONSPIRACY HERE INVOLVED. PETITIONER WAINER'S PROSECUTION WAS CONSEQUENTLY NOT BARRED

Petitioner Wainer alone contends that his prosecution was barred. He asserts that the proof shows

⁶⁶ *Blitz v. United States*, 153 U. S. 308, 318; *Fleisher v. United States*, 302 U. S. 218, 220; *Salazar v. United States*, 236 Fed. 541 (C. C. A. 8); *D'Allessandro v. United States*, 90 F. (2d) 640 (C. C. A. 3); *Spirou v. United States*, 24 F. (2d) 796 (C. C. A. 2), certiorari denied, 277 U. S. 596; *Priori v. United States*, 6 F. (2d) 575 (C. C. A. 6); *Jackson v. United States*, 102 Fed. 473 (C. C. A. 9); see also the *Miller*, *Murphy* and *Mazzochi* cases, *supra*.

A new trial would not be required, of course, since under the theory upon which the Government proceeded and the case was submitted to the jury, that body necessarily found petitioners guilty of participating in a single continuing conspiracy.

that he affirmatively withdrew from the conspiracy more than three years (but not more than six years) prior to the returning of the indictment on December 19, 1939 (Br. 2-3, 4, 5, 10-12).⁶⁷

The second paragraph of Section 3748 (a) of the Internal Revenue Code provides in part that "For offenses arising under section 37 of the Criminal Code, March 4, 1909, 35 Stat. 1096 (U. S. C. Title 18, § 88), where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years." ⁶⁸ This paragraph and the second and third exceptions in the first paragraph

⁶⁷ In view of the similarity of their situations (see opinion below, R. 612), it has been assumed that petitioner Braverman's requested instructions (8, 9, and 10, R. 32) and his motion for a directed verdict made at the close of the Government's case (R. 422-423, 425), which were joined in by petitioner Walner (R. 425, 589), are sufficient to raise the limitation question as to him, although the requested instructions and the motion were predicated upon evidence relating to petitioner Braverman only.

⁶⁸ The section in its entirety, except for matter not pertinent, reads:

PERIODS OF LIMITATION.

(a) CRIMINAL PROSECUTIONS.—No person shall be prosecuted, tried, or punished, for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, except that the period of limitation shall be six years—

(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner,

were first enacted in 1932 (Revenue Act of June 6, 1932, c. 209, Sec. 1108, 47 Stat. 169, 288). Prior to that this Court had held that a conspiracy having as its object the violation of an internal revenue law was a distinct offense from the objective offense and hence was not within the section. It therefore fell within the general three-year limitation provision relating to criminal offenses. (See *United States v. McKelvin*, 272 U. S. 633, 638; *United States v. Hirsch*, 100 U. S. 33, 34, 35; *United States v. Rabinowich*, 238 U. S. 78, 88-89.) This Court had also held that the first exception in the first paragraph, providing a six-year limitation period as to offenses involving the defrauding or attempting to defraud the United States, did not apply to an attempt to evade or defeat taxes, since the defrauding of the Government is not made an essential ingredient of the latter offense (*United*

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, and

(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document).

For offenses arising under section 37 of the Criminal Code, March 4, 1909, 35 Stat. 1026 (U. S. C., Title 18, § 88), where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years.

States v. Scharton, 285 U. S. 518). The result of these decisions was that attempts to evade or defeat taxes where the defrauding of the Government was not an essential element, and conspiracies to accomplish these objects, were required to be prosecuted within three years. It was to overcome the effect of these decisions, by permitting a six-year period for the prosecution of these offenses, that the second exception in the first paragraph and the second paragraph were added. See House Report No. 1492 on the Revenue Bill of 1932, p. 29, 72nd Cong., 1st sess.

There is consequently no necessity, as petitioner seems to indicate (Br. 10), that a conspiracy, to be within the second paragraph, must have as its object the commission of an offense in which defrauding or attempting to defraud the United States is an element.⁶⁵ Also, it is obvious, despite petitioner's insistence to the contrary (Br. 11), that the conspiracy charged in the instant indictment had as its objects the violation of provisions of the internal revenue laws designed to prevent the evasion or defeating of taxes. (See summary of the counts of the indictment at pp. 4-5, *supra*.) The six-year limitation period prescribed in the second paragraph of the section is therefore applicable with the result that the prosecution of petitioner Wainer was not barred.

The offenses enumerated in two of the counts of the indictment certainly have as an element the attempted defrauding of the Government. (See Counts 4 and 5, *supra*, p. 4.)

III

PETITIONER WAINER IS NOT NOW IN A POSITION TO URGE THAT THE TRIAL COURT SHOULD HAVE SUSTAINED HIS PLEA OF FORMER JEOPARDY. IF HIS CONTENTION MAY BE CONSIDERED, THAT COURT WAS NOT MADE AWARE OF ANY FACTS WHICH WOULD HAVE JUSTIFIED IT IN CONCLUDING THAT THERE WAS SUBSTANCE TO THE PLEA

Petitioner Wainer urges (Br. 4, 5, 12-13) that the trial court should have sustained his plea of former jeopardy (R. 432-438). He relies for jeopardy upon an indictment returned against him at the November Term, 1936, in the United States District Court for the Northern District of Illinois, Eastern Division, to which he pleaded guilty and as to which he served a sentence of two years and six months. That indictment and the instant indictment, he states, charged him with conspiring to violate the same laws at Chicago during the same time (Br. 12).⁷⁰

We submit that petitioner Wainer is in no position now to urge that the rejection of his plea of former jeopardy constituted reversible error. The indictment in the Northern District of Illinois was marked as Exhibit "B" to his plea (R. 433) but is not printed in the record and evidently was not

⁷⁰ The plea of former jeopardy, as set forth in the record, makes reference to another indictment in the Southern District of Illinois (R. 433), but petitioner Wainer makes no mention of that indictment in his brief in this Court and therefore apparently does not rely upon it.

certified to the Circuit Court of Appeals as one of the original exhibits (R. 602-603). This was undoubtedly because the plea's rejection was not assigned as error (R. 40-43, 595-601). The point is not briefed in the appellants' brief in the Circuit Court of Appeals; that court did not pass upon the question (R. 607-614); and no complaint is made in the petition for rehearing in that court filed on behalf of petitioner Wainer⁷¹ as to the failure of the court to do so. Since the Illinois indictment is not contained in the record this Court is afforded no opportunity for determining whether the two indictments charged the same conspiracy. Cf. *Ex Parte Hull*, 312 U. S. 546, 551.

Moreover, it is apparent from the colloquy attending the denial of the plea that petitioner's counsel was unable to advise the trial court that the Illinois indictment related to any of the transactions involved in the present case (R. 434, 435).⁷²

⁷¹ See copy of this petition appearing in the transcript of record filed with the petition for a writ of certiorari, pp. 699-702.

⁷² We have obtained through the United States Attorney who conducted the prosecution in this case a certified copy of the plea of former jeopardy and have lodged it with the Clerk of this Court. The tenth count of Exhibit "B" is the conspiracy count upon which petitioner relies. The only resemblance that count bears to the present indictment is that petitioner Braverman was also named as a conspirator, that it covers a portion of the period of time recited in the later indictment, that the locale of operations was in part in Chicago, and that violations of some of the same penal laws are alleged to have been the objects of the conspiracy. In every other respect the two indictments are dissimilar.

CONCLUSION

For the reasons stated, it is respectfully submitted that the sentences of petitioners should be modified through the elimination by this Court of the invalid six-year portion thereof, or the cases should be remanded to the district court for resentencing in accordance with law.⁷² In all other respects the judgment of the Circuit Court of Appeals should be affirmed.

CHARLES FAHY,

Solicitor General.

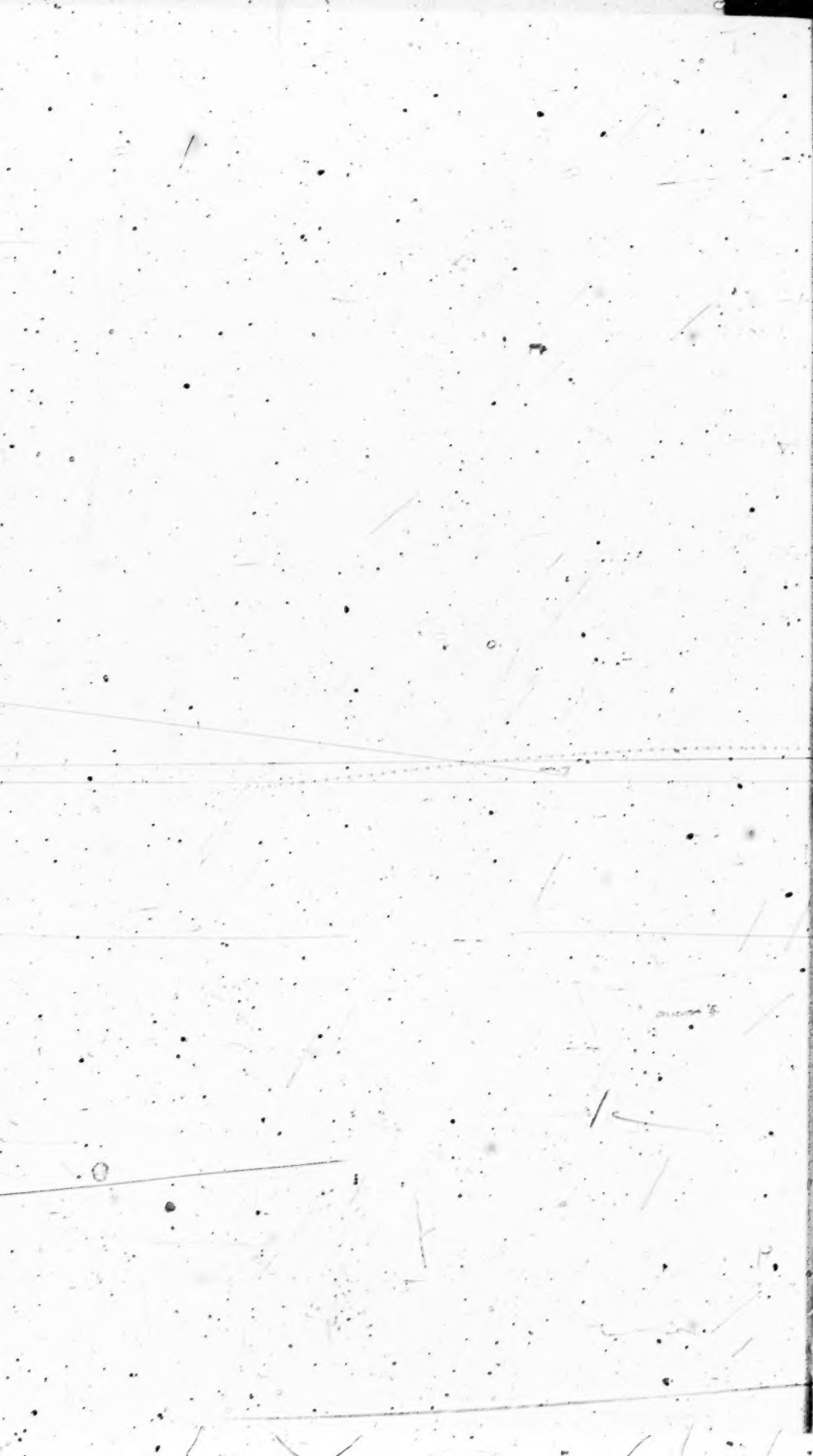
W. MARVIN SMITH,

Attorney.

OCTOBER 1942.

Indeed, the details alleged in the Illinois indictment would seem to lead inevitably to the conclusion that, as the district court indicated, that indictment dealt with a different conspiracy than that charged in the instant case. The burden was, of course, upon petitioner Wainer to establish that the two indictments charged the same conspiracy. It is significant that petitioner Braverman, who was named as a conspirator in both indictments, did not raise the question of former jeopardy.

⁷² If the Government's position with reference to petitioners' sentences is sustained by this Court its decision will be immediately called to the attention of the Pardon Attorney in this Department for action in connection with the similar sentence of the third appellant in the court below, Morris Frank (R. 45, 608, 613), who did not petition for a writ of certiorari. The Pardon Attorney will also be requested to inquire into the sentences of the other defendants who were convicted upon or pleaded guilty to the indictment in the instant case.



SUPREME COURT OF THE UNITED STATES.

Nos. 43, 44.—OCTOBER TERM, 1942.

Harry Braverman, Petitioner,
43 vs.
The United States of America.

Allen Wainer, Petitioner,
44 vs.
The United States of America.

On Writs of Certiorari to the
United States Circuit Court
of Appeals for the Sixth Cir-
cuit.

[November 9, 1942.]

Mr. Chief Justice STONE delivered the opinion of the Court.

The questions for decision are: (1) Whether a conviction upon the several counts of an indictment, each charging conspiracy to violate a different provision of the Internal Revenue laws, where the jury's verdict is supported by evidence of but a single conspiracy, will sustain a sentence of more than two years' imprisonment, the maximum penalty for a single violation of the conspiracy statute, and (2) whether the six-year period of limitation prescribed by § 3748(a) of the Internal Revenue Code is applicable to offenses arising under § 37 of the Criminal Code, 18 U. S. C. 88 (the conspiracy statute), where the object of the conspiracy is to evade or defeat the payment of a Federal tax.

Petitioners were indicted, with others, on seven counts, each charging a conspiracy to violate a separate and distinct internal revenue law of the United States.¹ On the trial there was evi-

¹ The seven counts respectively charged them with conspiracy, in violation of § 37 of the Criminal Code, unlawfully (1) to carry on the business of wholesale and retail liquor dealers without having the special occupational tax stamps required by statute, 26 U. S. C. § 3253; (2) to possess distilled spirits, the immediate containers of which did not have stamps affixed denoting the quantity of the distilled spirits which they contained and evidencing payment of all Internal Revenue taxes imposed on such spirits, 26 U. S. C. § 2803; (3) to transport quantities of distilled spirits, the immediate containers of which did not have affixed the required stamps, 26 U. S. C. § 2803; (4) to carry on the business of distillers without having given bond as required by law, 26 U. S. C. § 2833; (5) to remove, deposit and conceal distilled spirits in respect whereof a tax is imposed by law, with intent to defraud the United States of such tax, 26 U. S. C. § 3321; (6) to possess unregistered stills and distilling apparatus, 26 U. S. C. § 2810; and (7) to make and ferment mash, fit for distillation, on unauthorized premises, 26 U. S. C. § 2834.

denice from which the jury could have found that for a considerable period of time petitioners, with others, collaborated in the illicit manufacture, transportation, and distribution of distilled spirits involving the violations of statute mentioned in the several counts of the indictment. At the close of the trial petitioners renewed a motion which they had made at its beginning to require the Government to elect one of the seven counts of the indictment upon which to proceed, contending that the proof could not and did not establish more than one agreement. In response the Government's attorney took the position that the seven counts of the indictment charged as distinct offenses the several illegal objects of one continuing conspiracy, that if the jury found such a conspiracy it might find the defendants guilty of as many offenses as it had illegal objects, and that for each such offense the two-year statutory penalty could be imposed.

The trial judge submitted the case to the jury on that theory. The jury returned a general verdict finding petitioners "guilty as charged", and the court sentenced each to eight years' imprisonment. On appeal the Court of Appeals for the Sixth Circuit affirmed, 125 F. 2d 283; on the authority of its earlier decisions in *Fleisher v. United States*, 91 F. 2d 404 and *Meyers v. United States*, 94 F. 2d 433. It found that "From the evidence may be readily deduced a common design of appellants and others, followed by concerted action to commit the several unlawful acts specified in the several counts of the indictment." It concluded that the fact that the conspiracy was "a general one to violate all laws repressive of its consummation does not gainsay the separate identity of each of the several conspiracies". We granted certiorari, 316 U. S. 653, to resolve an asserted conflict of decisions.² The Government, in its argument here, submitted the case for our decision with the suggestion that the decision below is erroneous.

Both courts below recognized that a single agreement to commit an offense does not become several conspiracies because it continues over a period of time, see *United States v. Kissel*, 218 U. S. 601, 607; cf. *In re Snow*, 120 U. S. 274, 281-3, and that there

² Compare the decision below and those in *Beddow v. United States*, 70 F. 2d 674, 676 (C. C. A. 8th); *Yankichi Ho v. United States*, 64 F. 2d 78, 77 (C. C. A. 9th); and *Olmead v. United States*, 19 F. 2d 842, 847 (C. C. A. 9th), with those in *United States v. Mazzochi*, 75 F. 2d 497, 498 (C. C. A. 2nd); *Short v. United States*, 91 F. 2d 614, 622 (C. C. A. 4th); *Powe v. United States*, 11 F. 2d 598, 599 (C. C. A. 5th); and *United States v. Anderson*, 101 F. 2d 335, 333 (C. C. A. 7th).

may be such a single continuing agreement to commit several offenses. But they thought that in the latter case each contemplated offense renders the agreement punishable as a separate conspiracy.

The question whether a single agreement to commit acts in violation of several penal statutes is to be punished as one or several conspiracies is raised on the present record, not by the construction of the indictment, but by the Government's concession at the trial and here, reflected in the charge to the jury, that only a single agreement to commit the offenses alleged was proven. Where each of the counts of an indictment alleges a conspiracy to violate a different penal statute it may be proper to conclude, in the absence of a bill of exceptions bringing up the evidence, that several conspiracies are charged rather than one, and that the conviction is for each. See *Fleisher v. United States*, *supra*; *Shultz v. Hudspeth*, 223 F. 2d 729, 730. But it is a different matter to hold, as the court below appears to have done in this case and in *Meyers v. United States*, *supra*, that even though a single agreement is entered into, the conspirators are guilty of as many offenses as the agreement has criminal objects.

The gist of the crime of conspiracy as defined by the statute is the agreement or confederation of the conspirators to commit one or more unlawful acts "where one or more of such parties do any act to effect the object of the conspiracy". The overt act, without proof of which a charge of conspiracy cannot be submitted to the jury, may be that of only a single one of the conspirators and need not be itself a crime. *Bannon and Mulkey v. United States*, 156 U. S. 464, 468-9; *Joplin Mercantile Co. v. United States*, 236 U. S. 531, 535, 536; *United States v. Robinson*, 238 U. S. 78, 86; *Pierce v. United States*, 252 U. S. 239, 241. But it is unimportant, for present purposes, whether we regard the overt act as a part of the crime which the statute defines and makes punishable, see *Hyde v. United States*, 225 U. S. 347, 357-9, or as something apart from it, either an indispensable mode of corroborating the existence of the conspiracy or a device for affording a *locus poenitentiae*, see *United States v. Britton*, 108 U. S. 193, 204, 205; *Dealy v. United States*, 152 U. S. 539, 543, 547; *Bannon and Mulkey v. United States*, *supra*, 469; *Hyde v. Shine*, 199 U. S. 62, 76; *Hyde v. United States*, *supra*, 388; *Joplin Mercantile Co. v. United States*, *supra*.

For when a single agreement to commit one or more substantive crimes is evidenced by an overt act, as the statute requires, the

precise nature and extent of the conspiracy must be determined by reference to the agreement which embraces and defines its objects. Whether the object of a single agreement is to commit one or many crimes, it is in either case that agreement which constitutes the conspiracy which the statute punishes. The one agreement cannot be taken to be several agreements and hence several conspiracies because it envisages the violation of several statutes rather than one.

The allegation in a single count of a conspiracy to commit several crimes is not duplicitous, for "The conspiracy is the crime and that is one however diverse its objects". *Frohwerk v. United States*, 249 U. S. 204, 210; *Ford v. United States*, 273 U. S. 593, 602; *United States v. Manton*, 107 F. 2d 834, 838. A conspiracy is not the commission of the crime which it contemplates, and neither violates nor "arises under" the statute whose violation is its object. *United States v. Rabingwich*; *supra*, 87-9; *United States v. McElvain*, 272 U. S. 633, 638; see *United States v. Hirsch*, 190 U. S. 33, 34, 35. Since the single continuing agreement, which is the conspiracy here, thus embraces its criminal objects, it differs from successive acts which violate a single penal statute and from a single act which violates two statutes. See *Blockburger v. United States*, 284 U. S. 299, 301-4; *Albrecht v. United States*, 273 U. S. 1, 11-12. The single agreement is the prohibited conspiracy, and however diverse its objects it violates but a single statute, § 37 of the Criminal Code. For such a violation only the single penalty prescribed by the statute can be imposed.

Petitioner Wainer contends that his prosecution was barred by the three-year statute of limitations, 18 U. S. C. § 582, since he withdrew from the conspiracy more than three although not more than six years before his indictment. This Court, in *United States v. McElvain*, 272 U. S. 633, 638, and *United States v. Scharton*, 285 U. S. 518, held that the three-year statute of limitations applicable generally to criminal offenses barred prosecution for a conspiracy to violate the Revenue Acts, since it was not within the exception created by the Act of November 17, 1921, 42 Stat. 220, now § 3748(a)(1) of the Internal Revenue Code, which provided a six-year statute of limitations "for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not". To overcome the effect of these decisions, that Act was amended, Revenue Act

of 1932, 47 Stat. 169, 288, by the addition of a second exception, which provided a six-year statute of limitations "for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof" and by the addition of a new paragraph, reading as follows:

"For offenses arising under section 37 of the Criminal Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years."

To be within this last paragraph it is not necessary that the conspiracy have as its object the commission of an offense in which defrauding or attempting to defraud the United States is an element. It is enough that the conspiracy involves an attempt to evade or defeat the payment of federal taxes, which was among the objects of the conspiracy of which petitioner was convicted. Enlargement, to six years, of the time for prosecution of such conspiracies was the expressed purpose of the amendment. See H. R. Rep. No. 1492, 72d Cong., 1st Sess., 29.

We do not pass upon petitioner Wainer's argument that his plea of former jeopardy should have been sustained, since the earlier indictment to which he pleaded guilty and which he insists charged the same offense as that of which he has now been convicted, is not a part of the record.

The judgment of conviction will be reversed and the cause remanded to the district court where the petitioners will be resentenced in conformity to this opinion.

Reversed.

A true copy

Test:

Clerk, Supreme Court, U. S.